

HOUSE BILL REPORT

HB 2594

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to criminal street gangs.

Brief Description: Concerning criminal street gangs.

Sponsors: Representatives Hurst, Ross, Blake, Johnson, Dunshee, Pearson, Takko, Dahlquist, Van De Wege, Angel, Walsh, McCune, Nealey, Kirby, Schmick, Kelley, Wilcox, Haigh, Chandler, Armstrong, Bailey, Seaquist, Warnick, Hudgins, Eddy, Springer, Miloscia, Finn, Probst, Morris, Liias, Moeller, Orwall, Dammeier, Parker and Hargrove.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/25/12, 1/31/12 [DPS].

Brief Summary of Substitute Bill

- Allows prosecuting attorneys to seek injunctive relief against adults shown to be members or associates of a criminal street gang.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Armstrong, Goodman, Hope, Kirby and Ross.

Minority Report: Do not pass. Signed by 1 member: Representative Moscoso.

Staff: Sarah Koster (786-7303).

Background:

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

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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 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.

Summary of Substitute Bill:

The substitute bill allows for certain plaintiffs to seek injunctive relief to enjoin, abate, or prevent criminal street gang activity. "Criminal street gang activity" is defined to include both criminal street gang-related offenses, as defined in RCW 9.94A.030, and noncriminal acts that are in furtherance of a criminal street gang. Eligible plaintiffs are the Attorney General, a county prosecuting attorney, a city attorney, or a city prosecutor. However, a city attorney or prosecutor must obtain the approval of the county prosecuting attorney prior to filing an action.

Process for Obtaining an Injunction.

The complaint must describe the geographic area and the specific activities sought to be enjoined in that area. The complaint must be served on the street gang through personal service on at least five associates or members of the gang, at least two of whom occupy a leadership role in the gang.

An evidentiary hearing will be held, at which the plaintiff must prove, by a preponderance of the evidence, that:

1. a criminal street gang with known leadership, membership, and criminal activities is named as a respondent;
2. the persons served are associates or members of the criminal street gang;
3. the membership of the gang includes at least five people, with at least two in a leadership role;
4. the criminal street gang has operated in the specified geographic area for at least five years prior to filing;
5. during the prior five years, associates and members of the criminal street gang have committed a pattern of criminal street gang activity within the specified geographic area;
6. as a result of the gang activity, a significant number of residents of the geographic area fear their physical safety or that of their family, or damage to their property, such that the criminal street gang activity interferes with the quiet enjoyment of their residences;

7. the plaintiff's jurisdiction has offered or plans to offer prevention and intervention services to divert the associates or members of the criminal street gang from criminal street gang activity; and
8. the remedies requested are reasonable and necessary.

Additionally, the plaintiff must prove that any person whose activities are sought to be enjoined is a member or associate of the gang. If a person is not included in the initial hearing, they can be added at a later date, once this showing is made.

At the hearing, any person served may testify, cross-examine witnesses, and present evidence on his or her behalf. The court must appoint counsel for a person served, at the plaintiff's expense.

Terms of an Injunction.

If the plaintiff meets its burden, the court will issue an order describing a specific geographic area in which adults who have been proven to be associates of the criminal street gang are enjoined from certain behaviors. The restricted behavior includes:

- associating with other gang associates, except if they are married, have a child together, have a parent-child, grandparent-grandchild, or sibling relationship, or reside together and are related or in a dating relationship;
- intimidating, threatening, harassing, or assaulting anyone;
- possessing a firearm, ammunition, or deadly weapon in public or knowingly remaining in the presence of anyone in possession of such an item in public;
- possessing a controlled substance or drug paraphernalia or knowingly remaining in the presence of anyone in possession of such items;
- violating a curfew imposed by the court;
- using gestures or wearing colors or symbols associated with the criminal street gang;
- trespassing;
- defacing any public or private property or possessing graffiti or tagging tools;
- consuming alcohol in public; or
- any other behavior that has contributed in the past to the intimidation of the residents of the specified geographic area.

Juveniles may not be enjoined under this bill.

Penalties for Violation of an Injunction.

A person who violates an order is guilty of contempt of court. The penalty for contempt of court includes a fine of up to \$5,000 and imprisonment of not more than one year. Additionally, violation of an order issued under the terms of the bill is a gross misdemeanor, punishable by a fine of up to \$5,000, imprisonment of up to 364 days, or both.

If, at the original hearing, the person did not contest the finding that he or she was a criminal street gang associate or member, it is an affirmative defense that the person is no longer an associate or member of the criminal street gang.

Substitute Bill Compared to Original Bill:

The substitute bill requires that the persons served as representatives of the criminal street gang be served personally, provides a right to counsel for all persons to be enjoined, and eliminates juveniles from the scope of the bill.

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) This bill is a preventative measure; it prevents the commission of more serious crimes and allows individuals to turn their life around before they get too involved. Gangs are a disease and there must be several tools available to counteract gangs. Innocent lives are lost in the community and innocent people are trapped in their homes in certain neighborhoods, with young people afraid to take advantage of the community programs in place. This bill is needed to allow those programs to be as effective as possible.

(Opposed) Injunctions and increased policing are not effective; this will only increase the numbers of young people jailed. Economic activity will reduce gang activity, not suppression. This bill does not meet constitutional requirements; it is due process by committee and inhibits expressive activity under the first amendment. This bill may disproportionately impact youth of color. This provision is not necessary because crime is decreasing on its own. The civil injunction approach wastes money that could be used to fund after school programs and other effective social services. The injunction creates a status offense which will draw kids into the system, where they will meet actual gang members without having committed any crimes at all.

Persons Testifying: (In support) Representative Hurst, prime sponsor; Representative Ross; Jo Arlow, Washington Association of Sheriffs and Police Chiefs; and Ken Irwin, Yakima County Sheriff Department and Washington Association of Sheriffs and Police Chiefs.

(Opposed) Toshiko Hasegawa; Patricia Flores; Lillian Hewles; Shankar Narayan, American Civil Liberties Union of Washington; Toby Guevin, One America; Bob Cooper, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; Mauricio Ayon, Washington Community Action Network; James Bible, National Association for the Advancement of Colored People; Larry Evans, Office of King County Councilman Larry Gossett; Alex Morales and Leno Rose-Avila, Latino Equity Initiative; and David Lujano.

Persons Signed In To Testify But Not Testifying: Kate Baber, Statewide Poverty Action Network.