

SENATE BILL REPORT

SB 5280

As Reported by Senate Committee On:
Law & Justice, February 21, 2013

Title: An act relating to criminal activities occurring at rental properties.

Brief Description: Addressing criminal activities occurring at rental properties.

Sponsors: Senators Carrell, King, Holmquist Newbry, Padden, Becker, Sheldon, Rivers, Tom, Bailey, Roach and Honeyford.

Brief History:

Committee Activity: Law & Justice: 2/04/13, 2/21/13 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5280 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; Carrell, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Kline, Ranking Member; Kohl-Welles.

Minority Report: That it be referred without recommendation.

Signed by Senator Darneille.

Staff: Aldo Melchiori (786-7439)

Background: A tenant by sufferance is a person who obtains possession of a premises without the consent of the owner or other person having the right to give said possession. The tenant by sufferance is liable to pay reasonable rent for the actual time the tenant occupied the premises, and must, on demand, surrender possession to the owner or person who had the right of possession before the entry.

Criminal trespass in the first degree is a gross misdemeanor. It is committed when a person knowingly enters and remains unlawfully in a building. A person enters unlawfully when the person is not licensed, invited, or otherwise privileged to enter. In any prosecution, it is a defense that: (1) a building involved in an offense was abandoned; (2) the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; (3) the actor reasonably believed that the

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owner of the premises, or other person empowered to license access, would have licensed the person to enter or remain; or (4) the actor was attempting to serve legal process.

Any law enforcement agency that seizes a legend drug, a controlled substance, or an imitation controlled substance, must make a reasonable attempt to discover the identity of a landlord and notify the landlord in writing of the seizure and the location of the seizure of the illegal drugs or substances. Any law enforcement agency that arrests a tenant for threatening another tenant with a firearm or other deadly weapon, or for some other unlawful use of a firearm or other deadly weapon on the rental premises, or for physically assaulting another person on the rental premises, must also make a reasonable attempt to discover the identity of the landlord and notify the landlord about the arrest in writing.

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

Summary of Bill (Recommended Substitute): A person is guilty of criminal trespass in the first degree if the person is a tenant by sufferance or resides at a rental property and is not listed as a tenant on the rental agreement or as a guest in an affidavit signed by the owner or an agent of the owner of the property, and the person refuses to immediately upon demand surrender possession of the premises to the owner, or vacate the property, including other rental areas or common areas held by the owner. The existing defenses to criminal trespass also do not apply to a person trespassing in a dwelling in which a foreclosure action is pending or where the dwelling has been foreclosed upon and is being prepared for sale.

An owner or agent who has demanded a tenant by sufferance to vacate a premise may request law enforcement to remove the tenant as a trespasser. It is a defense that the person who refuses to surrender possession or vacate the property can produce an executed copy of a written rental agreement identifying the person as a lawful tenant of the rental property or an affidavit signed by the owner or an agent of the owner that allows the person to reside as a guest at the rental property. It is not a defense that the person was invited into the property by a lawful tenant of the property unless the tenant was an agent of the owner.

Any law enforcement agency which has found that a tenant or other resident of a dwelling unit is engaged in criminal street gang activity or human trafficking, or has been called to a rental property to investigate criminal street gang activity or human trafficking, must make a reasonable attempt to discover the identity of the landlord and must notify the landlord in writing of the criminal street gang activity or human trafficking occurring at the landlord's rental property. The notice must include the names of the tenant and individual or individuals who were engaged in any activity; the dwelling unit where the incident occurred; the date of the incident; actions taken by the law enforcement agency; a statement outlining the authority of a landlord to either evict the tenant who possesses a lawful rental agreement but is engaged in the activity or identify to law enforcement that the person is a tenant by sufferance; and any penalties that may be assessed against the landlord for failure to abate the nuisance.

A person is guilty of criminal trespass of a dwelling in foreclosure if the person knowingly enters or remains unlawfully in a dwelling in which an action is currently pending for foreclosure or has been recently filed on the dwelling and which has been vacated by the owner of record. Any person with knowledge of the status of a property may report the

trespass. Criminal trespass of a dwelling in foreclosure is a gross misdemeanor. If a person arrested for this offense claims to be a tenant, then the alleged landlord or a neighbor who has made every reasonable effort to notify the property owner of record regarding the nuisance or trespass may proceed directly to an unlawful detainer action.

Any person may petition the district or superior court to have an alleged tenant arrested and removed from a premise if the alleged tenant is engaging in activity that constitutes a public nuisance and the noncompliance substantially affects the safety of the neighborhood, or the landlord fails to evict the tenant causing the public nuisance or to notify the tenant to cease the public nuisance. A person may not be held liable in any cause of action for bringing an eviction action against a tenant if the eviction action was brought in good faith.

At the unlawful detainer action, the court must determine whether the person arrested is actually a tenant at the dwelling. In making the determination, the court must consider whether the lease is in writing or oral and must make every possible effort to provide notice to the owner of record of the property to confirm the alleged tenant's status. The court must also consider whether the person arrested has been engaged in an activity at the premises that is considered a public nuisance to the neighborhood or has allowed anyone else to engage in an activity at the premises that is considered a public nuisance to the neighborhood.

In determining whether an alleged tenant is engaged in public nuisance activity, a court must consider the totality of the circumstances, including factors such as whether there have been a significant number of complaints to the landlord about the alleged tenant's activities at the property, damages done by the alleged tenant to the property, damages done by the alleged tenant to the property of other tenants or neighbors, harassment or threats made by the alleged tenant to other tenants or neighbors that have been reported to law enforcement agencies, any police incident reports involving the alleged tenant, and the alleged tenant's criminal history.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on August 1, 2013.

Staff Summary of Public Testimony: PRO: There are squatters entering gated communities, changing the locks on houses, and moving in. It is currently very difficult to engage the police in these matters. When squatters damage a foreclosed house, banks and homeowners are damaged. Landlords are having problems with gang members invited in by tenants. The property values of the entire neighborhood are harmed.

CON: Tenants have a right to the private enjoyment of their property. This would give landlords the power to veto a tenant's guest list. Evictions could occur before any finding that criminal action had actually occurred. The bill does nothing to address gang activity. Term of leases, typically included in lease agreements, should not be inserted in the criminal law.

Persons Testifying: PRO: Senator Carrell, prime sponsor; Ron Newbry, Bill McLaughlin, Yakima Valley Landlord Assn.; Denny Eliason, WA Bankers Assn., United Financial Lobby.

CON: Shankar Narayan, ACLU-WA; Jonathan Grant, Tenants Union of WA; Bob Cooper, WA Assn. of Criminal Defense Lawyers, WA Defender Assn.; Bruce Neas, Columbia Legal Services.