

HOUSE BILL REPORT

HB 2834

As Reported by House Committee On: Education

Title: An act relating to gang and hate group activity on school grounds and at school activities.

Brief Description: Regarding gang and hate group activity at schools and school activities.

Sponsors: Representatives Probst, Hurst, Sullivan, Hope, Quall, Chase, Kelley, Wallace, Hunt, Conway, Haigh, Kenney and Simpson; by request of Superintendent of Public Instruction.

Brief History:

Committee Activity:

Education: 1/22/10, 2/2/10 [DPS].

Brief Summary of Substitute Bill

- Adopts new definitions of "criminal street gang," "hate group," "criminal street gang associate or member," and "gang activity."
- Includes "hate groups" in the definition of "criminal street gang" to the extent that such groups otherwise satisfy the requirements of the definition.
- Allows suspension or expulsion if a student is a member or associate of a criminal street gang and knowingly engages in gang activity on school grounds or while engaged in any officially sanctioned school sponsored activity.
- Prescribes the grounds for which school districts may reject applications from non-resident students.
- Prohibits a school district from rejecting a non-resident application to an online program unless the program requires the presence of the student on school property and there is a significant risk of disruption or significant concern for staff or student safety.
- Tasks the Washington State School Directors' Association and the Office of Superintendent of Public Instruction, in collaboration with representatives from many stakeholder groups, with developing a model policy and procedure regarding criminal street gangs and gang activity and making the policy and procedure available to districts by January 1, 2011.

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.

- Requires school districts to enact or modify a policy and procedure regarding criminal street gangs and gang activity by September 1, 2011.

HOUSE COMMITTEE ON EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Quall, Chair; Maxwell, Vice Chair; Priest, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dammeier, Fagan, Johnson, Orwall, Probst and Sullivan.

Minority Report: Do not pass. Signed by 3 members: Representatives Hunt, Liias and Santos.

Staff: Cece Clynch (786-7195).

Background:

Gangs in Schools Task Force.

In 2007 the Legislature directed the Office of Superintendent of Public Instruction (OSPI) to convene a task force to examine how gangs are affecting school safety and to recommend methods to prevent and eliminate gangs in schools, gather intelligence on gangs, and share information about gangs.

The task force made seven recommendations in 2008 and, in its 2009 report to the Legislature, reaffirmed these recommendations to:

- revise the statute regarding suspension and expulsion to include a definition of "gang" consistent with the criminal code definition and a definition of "gang activity" to include intimidation of staff or students;
- establish 1,000-foot "school safety zones" from which gang members can be excluded if they engage in activity that warrants concern for the safety of staff or students;
- provide grants to districts and communities for prevention and intervention programs;
- create a dedicated funding formula for support of transition programs to provide educational and intervention services for suspended or expelled students;
- develop sample anti-gang school policies that include consistent discipline practices, and a mandate that all districts adopt an anti-gang policy;
- provide support for ongoing in-state training for all agencies and providers serving gang-affected youth; and
- develop a secure information-sharing system for exchange of information on gang activity.

The 2009 Report (Report) provided the following updates on gang activity in schools:

- Gang activity in communities and schools is increasing and expanding to areas previously unaffected.
- Many students report being intimidated by gang activity at school.
- Schools report that gang recruitment of middle school students is common, and that gang issues are affecting elementary schools.

- The Healthy Youth Survey indicates that nearly 10 percent of grade 10 students are involved in gang activity, with the estimated number of gang members and associates in Washington schools at 20,000 to 30,000.
- Activity of gang-like security threat groups and extremist groups seems to be increasing, with a corresponding increase in hate group activity in and around schools.
- Students suspended and expelled for gang-associated behaviors are often left without any opportunity to continue their education, and without available intervention and alternate placements, schools may have no practical option other than the use of school exclusion.
- Schools continue to report concerns about gang activity near campus, including shootings and gang-related fights and assaults that put students and staff at risk.
- There is a high demand for gang awareness training.
- Anecdotal information seems to indicate that gangs are the most critical safety and security issue that schools are currently facing.

Throughout the Report, the task force advocated for a balanced approach to address gang problems, stating that suppression activities are essentially the treatment of the symptom rather than the causes of youth gangs and that prevention and intervention are also necessary.

School Discipline.

A student may be suspended or expelled if the student is a member of a gang and knowingly engages in gang activity on school grounds. "Gang" means a group which: (1) consists of three or more persons; (2) has identifiable leadership; and (3) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

Non-resident Students.

A district may reject applications from non-resident students whose disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership, or if the student has been expelled or suspended from a public school for more than 10 consecutive days. "Gang" is defined as above. The district must provide applicants written notice of approval or denial in a timely manner. Rejections must include the reasons and the right to appeal.

Summary of Substitute Bill:

Legislative intent is expressed that the schools of this state be free of the negative influences of criminal street gangs that are inconsistent with the maintenance of a positive and safe school climate. Several findings are made:

- Gang activity on school grounds and at school activities places staff and students at risk and interferes with schools' educational mission.
- Because of the highly mobile nature of modern gangs, no region is immune to the effects of criminal street gang activity.
- Clearly stated and consistent school policies are necessary to protect student due process rights.

- Suppression must be combined with prevention and intervention to effect long-term reductions in gang and hate group activity.

Timeline for Development of Policies and Procedures.

By January 1, 2011, the Washington State School Directors Association (WSSDA) and the OSPI, in collaboration with the Gangs in Schools Task Force and other stakeholders, must develop and make available to school districts a model policy and procedure regarding gangs and gang activity. The group must include representatives of the following stakeholder groups:

- school directors and administrators;
- civil rights organizations;
- state ethnic commissions;
- the Tribal Leader Congress;
- parents;
- students;
- law enforcement;
- the Achievement Gap Oversight and Accountability Committee; and
- the Office of the Education Ombudsman.

By September 1, 2011, each school district must enact an anti-gang policy or modify an existing policy. Such policies must prohibit criminal street gang activity on school property and school vehicles, and at all officially sanctioned school activities. A policy must outline a procedure that implements the policy in a manner consistent with all pertinent laws, rules, and any guidance provided by the OSPI. Such policies and procedures must also include:

- a statement that criminal street gang activities are prohibited on school properties and at officially sanctioned school events;
- definitions of all terms, including "criminal street gang," "gang member or associate," "gang activity," and "hate group" consistent with the definitions found in statutes and any rules adopted by the OSPI; and
- specific guidelines to be used for determining if a student falls under the definitions of member or associate for the purpose of disciplinary action and an avenue for a student to appeal that determination and/or have it later removed from the student's school record.

Policies and procedures must be construed and applied in a manner that does not discriminate on the basis of race, creed, color, national origin, religion, sex, or sexual orientation, and must be consistent with Washington's Law Against Discrimination. The OSPI must require reporting of discipline for criminal street gang conduct to monitor for disproportional impact on protected groups.

Definitions.

The definition of "gang" found in the school code is stricken and four new definitions are added:

- "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in

or have engaged in a pattern of criminal street gang activity. This definition includes hate groups to the extent such groups otherwise satisfy the requirements of this definition. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide organizations or their members or agents.

- "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.
- "Gang activity" means any act that is committed for one or more of the following reasons:
 1. to gain admission, prestige, or promotion within the gang;
 2. to increase or maintain the gang's size, prestige, dominance, or control in any geographical area;
 3. to exact revenge or retribution for the gang or any member of the gang;
 4. to obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;
 5. to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or
 6. to provide the gang with any advantage in, or any control or dominance over any criminal market sector including, but not limited to: manufacturing, delivering, or selling any controlled substance; arson; trafficking in stolen property; promoting prostitution; human trafficking; or promoting pornography.
- "Hate group" means an organization whose primary purpose is to promote animosity, hostility, and malice against a person or persons or against the property of a person or persons because of race, religion, disability, sexual orientation, ethnicity, or national origin.

Suspension or Expulsion.

A student may be suspended or expelled, consistent with other laws and rules related to student discipline, if the student is a member or associate of a criminal street gang and knowingly engages in gang or hate group activity on school grounds or while engaged in any officially sanctioned school-sponsored activity.

Disciplinary Rules and Guidance.

The OSPI, in consultation with the Task Force on Gangs in Schools and the School Safety Advisory Committee, may adopt rules pertaining to the discipline of students for gang-related or hate group-related behavior. Such rules must include reasonable standards establishing whether a student falls under the definition of a gang or hate group member or associate, specific definitions of conduct considered gang or hate group activity, limits on disciplinary exclusions from school, and required reporting or recordkeeping. The OSPI must provide guidance to districts and update such guidance as necessary.

Non-resident Students.

School district authority to reject applications from non-resident students on grounds of gang membership is modified. Rejection may be predicated on disciplinary records that raise significant concerns for staff or student safety as evidenced by history of: (1) convictions for crimes; or (2) disciplinary actions for violent or disruptive behavior that resulted in

suspension or expulsion. An application cannot be rejected solely on the basis that the student has been expelled or suspended from a public school for more than 10 consecutive days. There also must be evidence that admission of the student would present a significant risk of disruption of the educational environment or significant concern for staff or student safety.

Districts accepting applications from non-resident students for admission to an online learning program may not deny a non-resident application on any of the above bases unless the program regularly requires the presence of the student on school property and there is a significant risk of disruption of the educational environment or a significant concern for staff or student safety caused by the student's presence.

Written notification of approval or denial must be provided in a timely manner not to exceed five school business days from receipt of the application unless extenuating circumstances exist.

Substitute Bill Compared to Original Bill:

The OSPI is no longer tasked with defining "hate groups" as this term is specifically defined. "Hate groups" are included within the definition of "criminal street gang" to the extent that such groups otherwise satisfy the definition. The requirement that the OSPI convene a work group and report back to the Legislature regarding definitions, rules, and guidance is deleted.

Representatives from the Achievement Gap Oversight and Accountability Committee and the Office of the Education Ombudsman are added to the group working with the WSSDA and the OSPI to develop a model policy.

The authority to expel or suspend for gang activity is modified and must be consistent with other discipline laws and rules. The activity on which the expulsion or suspension is based must have occurred on school grounds or while engaged in any officially sanctioned school sponsored activity. School district policies with respect to criminal street gangs and gang activity must include, within an outline of progressive discipline, an initial warning and opportunity to correct.

The reasons for rejection of a non-resident student's application are changed, and rejection may not be based on grounds of gang membership.

Appropriation: None.

Fiscal Note: Requested on January 14, 2010.

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) The work by the Gangs in Schools Task Force is much appreciated. This bill balances concerns voiced by various persons and entities regarding safety on the one hand and protections for students' rights on the other. The committee has heard testimony from schools relating to problems with white supremacist groups and it is in light of that testimony that hate groups are also referenced in this bill. Currently, only Seattle Public Schools have a policy regarding hate groups. It is known that bias and hate can trigger the targets of such bias and hatred to form gangs. Schools need guidance regarding gangs and hate group activities. This bill will improve school safety. Even elementary schools are experiencing gang-related problems. There is a strong tie between this bill and the bills related to anti-harassment and reducing dropouts. The problem of gangs has been around for some time and will be around for some time to come. It has changed a lot over the last 40 years, however. There is a need for flexibility so that responses to problems remain current and appropriate. This bill represents hundreds of hours of work on gang issues. It contains elements of suppression as well as intervention and prevention. The OSPI and Tyson Vogeler are to be commended. Small districts need to be empowered to handle gang problems. These smaller districts have little money but may have lots of gang problems. In some, students are afraid to walk home, or even down the hall, because of hand gestures by gang members. There needs to be a place for students who have been suspended or expelled to go. Without another avenue they are sent to the wolves. In one case after being expelled at 11 years old after a fight, a student could not go to school but was sent home and into a neighborhood where the only people to look up to were dropouts selling drugs. Online credit retrieval is an option for some but other students need hands on education. Some students are essentially pushed out of school without any educational options available. All rights need to be balanced. Student surveys show strong concerns with gang violence and it is the top reason expressed by students for feeling unsafe. This is a youth problem and youth need to be included so that they can be part of the solution. This bill is the start of a solution to a complex problem that will not be eliminated overnight. Parents are pleading for help in getting their children out of gangs. One student was a gang member but, nevertheless, with the help of his mother, he was president of his class, graduated, and went off to school. When he returned to the community, he was killed by a gang member. This tragedy affected the whole community.

(Opposed) The goal is worthy and the OSPI's efforts to reach out are appreciated but the Constitution and due process must be respected. The bill is overbroad and contains too many undefined terms. There is no definition of "hate groups" or related standards. There are no standards regarding "gang activity." Instead, too much is delegated to the OSPI and there is no way of telling what the standards and definitions will say. Caution and care is needed so that this does not result in racial profiling. Allowing suspension or expulsion based on gang membership is troublesome, particularly since the student could very well have been rehabilitated. There is a gang problem and schools do need to address the problem but we oppose this bill in its current form. Working in the courts has illustrated the consequences to a student of getting labeled as a gang member. Appearance has been used as a proxy for labeling someone a gang member. It is better that students stay in school and obtain an education rather than be pushed out of the school based on their appearance.

Persons Testifying: (In support) Representative Probst, prime sponsor; Randy Town, Education Service District 105, Yakima; Tyson Vogeler, Office of Superintendent of Public Instruction; Steve Zuber, Office of Education Ombudsman; Joe Pope, Association of Washington School Principals; Mick Hoffman, Vancouver Public Schools; Shelby Langdon,

Wahluke School District; Larry Sanchez, Grant County Sheriff's Office; Dennis Turner and Manuel Hernandez, Building the Bridges; Jena Graham, Legislative Youth Advisory Council; and Simon Lee Sampson, Arturo Arellano Jr., and Jose Eligto Johanes, Community Safety Network.

(Opposed) Shankar Narayan, American Civil Liberties Union; and John Rodgers, Washington Defender Association.

Persons Signed In To Testify But Not Testifying: (In support) Kim Howard, Washington State Parent Teacher Association; and Heather Hastie-Lelery, Wahluke School District.