

HOUSE BILL REPORT

HB 2415

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 Ross, Chandler, Pearson, Klippert, Johnson, Taylor, McCune, Bailey, Schmick and Hurst.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/27/10, 1/29/10 [DP].

Brief Summary of Bill

- Creates two types of crimes relating to gang intimidation and increases the penalties.
- Increases the penalties for Criminal Street Gang Tagging and Graffiti.
- Creates gang sentencing enhancements for gang members that commit a criminal street gang-related felony offense.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 6 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Kirby and Ross.

Minority Report: Do not pass. Signed by 2 members: Representatives Appleton and Goodman.

Staff: Yvonne Walker (786-7841).

Background:

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.

A variety of statutory provisions exist with respect to criminal gang activity. For example, a person is guilty of Criminal Gang Intimidation if he or she threatens another person because that person refuses to join a gang or attempts to withdraw from a gang, and either the person or the victim is a student in a public or alternative school. Criminal Gang Intimidation is a seriousness level III, class C felony offense.

Under the Common School Act (Act) for public schools, "gang" is defined as 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. Under this Act, a student who is enrolled in a public school or an alternative school may be suspended or expelled if the student is a member of a gang and knowingly engages in gang activity on school grounds.

Under the Sentencing Reform Act (SRA), "criminal street gang" is defined as 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.

Crimes against persons. If a crime is designated as a crime against persons additional restrictions may be imposed on the convicted person at sentencing. Such restrictions include: that the convicted person cannot have his or her record of conviction cleared; cannot qualify to earn up to 50 percent of earned release time; and may be subject to a mandatory term of community custody.

Criminal Street Gang Tagging and Graffiti. A person is guilty of Criminal Street Gang Tagging and Graffiti if he or she commits Malicious Mischief in the third degree and he or she has multiple current or prior convictions for Malicious Mischief in the third degree offenses, and at least one of the current offenses is a criminal street gang-related offense. Criminal Street Gang Tagging and Graffiti is a gross misdemeanor offense.

Sentencing Enhancements. Under the SRA, the court must impose imprisonment in addition to the standard sentencing range if specific conditions for sentencing enhancements are met. Sentencing enhancements may apply if any of the following apply: (1) the offender was armed with a firearm while committing certain felonies; (2) the offender was armed with a deadly weapon while committing certain felonies; (3) the offender committed certain felonies while incarcerated; (4) the offender committed certain drug offenses; (5) the offender committed vehicular homicide while under the influence of alcohol or drugs; or (6) the offender committed a felony crime that was committed with sexual motivation.

The U.S. Supreme Court, in *Blakely v. Washington*, ruled that any factor that increases a defendant's sentence above the standard range, other than the fact of a prior conviction, must be proven to a jury beyond a reasonable doubt. To do otherwise would violate the defendant's right to a jury trial under the Sixth Amendment.

Summary of Bill:

Criminal Gang Intimidation is divided into two separate crimes:

- School Criminal Gang Intimidation occurs when a person threatens another person because that person refuses to join a gang or attempts to withdraw from a gang, and either the person or the victim is a student in a public or alternative school. School Criminal Gang Intimidation is a seriousness level IV class C felony offense.
- Criminal Gang Intimidation occurs when a person threatens another person because that person refuses to join a gang or attempts to withdraw from a gang, and neither the person or the victim is a student in a public or alternative school. Criminal Gang Intimidation is a seriousness level VI class B felony offense.

Crime against persons. The offense of Criminal Street Gang Intimidation is categorized as a crime against persons.

Criminal Street Gang Tagging and Graffiti. The offense of Criminal Street Gang Tagging and Graffiti is increased to a class C felony offense for adult offenders and a category B offense for juvenile offenders.

Sentencing Enhancements. A procedure is established for determining whether a gang-related offense involved a criminal street gang member or associate, and new sentencing enhancement penalties are created for the conviction of such gang-related offenses. If a criminal street associate or member is found to have committed a criminal street gang-related felony offense, the following additional times must be added to the standard sentence range:

- 36 months for any class A felony offense;
- 24 months for any class B felony offense; and
- 18 months for any class C felony offense.

If the offender is being sentenced for more than one offense, the gang sentencing enhancement must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a gang enhancement. All gang enhancements must be tripled if the offender is being sentenced for a gang enhancement and the offender has previously been sentenced for a gang enhancement, any deadly weapon enhancement, or both.

All gang enhancements are mandatory, must be served in total confinement, and must run consecutively to all sentencing provisions, including any sentencing enhancements. An offender may be granted an authorized extraordinary medical placement. If the standard sentence range exceeds the statutory maximum sentence for the offense, the statutory maximum sentence must be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There is a clear and present danger in Yakima due to gang violence. Gangs have started to take over the schools. Today, kids do not care about the alcohol or cigarettes like they used to years ago. They want guns. Last year alone there were 28 homicides in Yakima due to gang activity. Gang violence has become so prevalent in Yakima that it seems like there is a drive-by shooting at least once a day.

When graffiti first appeared in Yakima, it was thought to be innocent until it was later discovered that it was related to gangs. In addition, intimidation of victims and witnesses is also common. Witnesses, and even gang members that testify against other gang members, are retaliated on. Yakima is experiencing how the lives of many law abiding citizens have become eroded by gang violence and gang members. These kids are intent on doing harm to the community.

Yakima relies on tourism, it is time to get a hand on gang activity. The gang problem in Yakima has gotten so bad that they use the National Guard on street corners for protection. The prosecutor's office had to develop a special unit just to handle the number of gang-related cases in Yakima. Even the citizens of Yakima are starting to take on this problem since the hands of the police and prosecutors are tied.

Yakima is trying to do everything possible to take care of the gang violence problem but the police need some tools to fight this. Several years ago the Washington Association of Sheriffs and Police Chiefs led a workgroup of which some of these bill ideas relating to gangs have come from. This piece of legislation will be another tool to use to prosecute gang members and their activities.

People are losing their liberties all the time due to gang violence hanging around them. Yakima is dedicated to helping rid its city of gang activity through a 3-prong tactic of prevention, intervention, and suppression. Strong families and good education are important to reducing gang families. This bill is a great first-step to get rid of these nuisances.

(Opposed) There are concerns that this bill is not the right tool to prosecute gang violence. There are already laws on the books to punish offenders. There are some areas of the state where racial profiling has become a problem and a bill like this could lead to more stereotyping. This bill is also going to cost money, and as a result alternative methods for punishment should be taken and the current sentencing system should remain in place.

Persons Testifying: (In support) Representative Ross, prime sponsor; Ken Irwin, Yakima County Sheriff's Office; Micah Cawley and Richard Zais, City of Yakima; Don Pierce, Washington Association of Sheriffs and Police Chiefs; James Hagerty, Yakima County Prosecuting Attorneys Office; Troy Clements, Yakima County Deputy Prosecuting Office; Maureen Adkison, Yakima City Council; Kathy Coffey, Yakima Assistant Mayor; and Sam Granato, Yakima Police Department.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.