

**Public Safety & Emergency Preparedness
Committee**

HB 2550

Brief Description: Concerning abatement of nuisances involving criminal street gang activity.

Sponsors: Representatives Ross, Schmick and Warnick.

Brief Summary of Bill

- Authorizes a board of county commissioners to adopt procedures in an ordinance for the filing of a nuisance action against a criminal street gang member or a building or unit used to aid or conduct criminal street gang activity.
- Provides procedures for restraining orders, preliminary injunctions, and abatement orders in a criminal street gang nuisance action.

Hearing Date: 1/27/10

Staff: Alexa Silver (786-7190).

Background:

Nuisance Law.

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 law of nuisance has traditionally been developed by the courts, but state and local governments may declare what constitutes a nuisance and provide for the abatement of the nuisance. For example, the Legislature has enacted nuisance laws regarding prostitution, exhibition of lewd films, and fighting.

Drug Nuisance Law.

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.

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. A person may bring an action to abate the nuisance by filing a complaint in superior court that describes the adverse impact of the property on the neighborhood.

If a nuisance is established, the court may issue an abatement order directing the removal and disposition of property under drug forfeiture laws. The abatement order must also provide for immediate closure of the building or unit for a period of one year. While the order of abatement is in effect, the building or unit is in the custody of the court. An owner may be able to avoid abatement if: (1) the owner had no knowledge of the nuisance or was making reasonable attempts to abate the nuisance, and (2) the owner will immediately abate the nuisance and prevent the nuisance for one year.

Criminal Street Gang 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 participates in a criminal street gang and intentionally promotes, furthers, or 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 promote, further, or 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 Bill:

Nuisance Action Authorized.

A board of county commissioners may adopt procedures in an ordinance for the county prosecuting attorney and county residents to file injunctive actions for certain criminal street gang-related nuisances. The prosecuting attorney may file an action seeking an injunction against a criminal street gang member to enjoin his or her criminal street gang activity or a criminal street gang offense in the county. Either the prosecuting attorney or a county resident may file a nuisance action against a building or unit that is being used to aid, promote, or conduct criminal street gang activity. If the building is multiunit, only the offending unit is a nuisance.

Restraining Order or Preliminary Injunction.

Upon a showing of good cause, a court may issue a restraining order or preliminary injunction to prevent people other than the legal owner from removing or interfering with the contents of the building or unit. Preliminary relief to prevent the nuisance is authorized. The method of service of the restraining order or preliminary injunction is specified, and a copy must be sent by registered mail to the owner of the building. The officer who serves the restraining order or

preliminary injunction must create and submit to the court an inventory of the contents of the building or unit that are used to maintain the nuisance.

A criminal street gang nuisance action has precedence over other actions, except prior matters of the same character, drug nuisance actions, criminal proceedings, election contests, temporary restraining orders and injunctions, foreclosures by a legal owner, and actions to forfeit a vehicle used in violation of the Uniform Controlled Substances Act.

Abatement Order.

If a nuisance is established, the court must enter an abatement order as part of the final judgment. If the building or unit is not subject to the interests of innocent legal owners, the order shall provide for immediate closure of the building or unit and its continued closure for one year. While the abatement order remains in effect, the building or unit is in the court's custody. The plaintiff's costs in the action are a lien on the building or unit, subject to the lien of the legal owner. The lien is collectible by execution issued by court order.

An owner may be able to avoid abatement if: (1) the owner had no knowledge of the nuisance or was making reasonable attempts to abate the nuisance, and (2) the owner will immediately abate the nuisance and prevent the nuisance for one year.

Other Provisions.

Intentional violation of a restraining order, preliminary injunction, or order of abatement is a misdemeanor when the action is brought by a political subdivision.

If the owner of the building or unit has been found in contempt of court and has been fined, the fine is a lien on the building or unit.

Appropriation: None.

Fiscal Note: Available.

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