

HOUSE BILL REPORT

HB 2550

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

Title: An act relating to abatement of nuisances involving criminal street gang activity.

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

Sponsors: Representatives Ross, Schmick and Warnick.

Brief History:

Committee Activity:

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

Brief Summary of Substitute Bill

- Authorizes the legislative authority of a county or municipality 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, permanent injunctions, and abatement orders in a criminal street gang nuisance action.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

Staff: Alexa Silver (786-7190).

Background:

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.

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.

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 Substitute Bill:

Nuisance Action Authorized.

The legislative authority of a county or municipality may adopt procedures in an ordinance for a public agency and certain individuals to file nuisance actions for criminal street gang-

related nuisances. A public agency may file an action seeking a restraining order, preliminary injunction, or permanent injunction against a criminal street gang member to enjoin his or her criminal street gang activity or a criminal street gang offense. Either a public agency or a person who resides, works in, or owns property in the same multifamily building or apartment complex or within a one-block radius of the property where the nuisance is alleged to exist may file an action for an injunction against a building or unit that is being used to aid, promote, or conduct criminal street gang activity. 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 interfering with the contents of the building or unit. Preliminary relief to prevent the nuisance is authorized. The restraining order or preliminary injunction is effective no more than 15 days. The method of service of the restraining order or preliminary injunction is specified. A copy of the complaint must be served on the defendant at least six days before the hearing.

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

Permanent Injunction and Abatement Order.

If a nuisance is established in an action against a criminal street gang member, the final order must include entry of a permanent injunction. If a nuisance is established in an action against a building or unit in a building, 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 for a period of one year. While the order remains in effect, the building or unit is in the court's custody. A law enforcement officer must be authorized to make and return to the court an inventory of the building or unit in a building. The plaintiff's costs in the action are a lien on the building or unit to the extent of the owner's interest, and the lien must be filed as a judgment summary.

An owner may 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. "Reasonable efforts" include attempting to terminate a tenancy or lease, placing restrictions on the rental agreement or lease, adopting feasible measures on the property to prevent criminal street gang activity, and cooperating with law enforcement.

If there is insufficient evidence of a nuisance, the court may order the person who filed the complaint to pay reasonable attorneys' fees, costs, loss of revenue, and damages.

Other Provisions.

When the nuisance action is brought by a public agency, intentional violation of a court order under the act is a misdemeanor. 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 to the extent of the owner's interest. The lien must be filed, recorded, and enforced as a judgment summary.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- permits the legislative authority of a municipality, as well as a county, to enact an ordinance authorizing gang nuisance actions;
- authorizes any public agency to bring a nuisance action;
- limits the individuals who may bring an action to persons who reside, work, or own property in the building or within a one-block radius of the nuisance;
- clarifies that a nuisance action seeking a restraining order, preliminary injunction, or permanent injunction may be filed against a gang member;
- permits a nuisance action only against buildings or units that are used for the purpose of aiding, promoting, or conducting criminal street gang activity rather than any building or unit where such acts take place;
- excludes property used for the purpose of providing health services, food and financial assistance, treatment, counseling, training, religious services, education, civic involvement, or any social service or charitable assistance;
- requires notice to be served on the defendant or the occupant and owner according to the rules of civil procedure, and requires notice to be served at least six days before the hearing rather than three days;
- limits the effectiveness of an ex parte temporary restraining order or preliminary injunction to 15 days, unless the court grants a continuance;
- removes the provision making it contempt of court to violate a restraining order or preliminary injunction;
- adds child dependency cases and any other case determined to be a priority by statute or the court to the list of actions over which a gang nuisance action does not take precedence;
- requires that a lien be recorded and enforced as a judgment summary;
- defines "reasonable efforts" for the purposes of determining whether the occupant or owner of the building made reasonable efforts to abate the nuisance;
- authorizes a court to award attorneys' fees and damages if the court finds insufficient evidence of a nuisance; and
- requires that law enforcement be authorized to create an inventory of the building or unit upon issuance of the final abatement order rather than the restraining order or preliminary injunction.

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) Gang violence is a scourge on the communities in Central Washington and is a problem statewide. Gang members are young career criminals intent on doing harm to the community. Gangs have evolved and become more organized. They target law enforcement, because they know officers have guns and bullet proof vests in their homes. This bill gives law enforcement the tools and options they need to make more arrests and follow up on citizens' complaints. It allows law enforcement to be more proactive, which has been successful in California. Yakima County is eager to pass an ordinance with injunctive actions. In an area that relies on tourism, it is important to get a handle on the gang blight. Victims and witnesses live in terror and are unlikely to file injunctive actions, because court rules allow defendants to obtain discovery, and gangs retaliate against victims and witnesses who come forward. It would be helpful to have funds to help victims and witnesses relocate.

(With concerns on original bill) Land title companies examine chains of title to ensure they are free of encumbrances. This bill creates secret or hidden liens that cannot be discovered by examining chains of title.

(Opposed) This bill is not the right tool to address gang issues. Defining "building" to include property where criminal street gang activity takes place is too broad and will draw in innocent landowners. The burden of proof requiring a person to prove he or she did not know about the nuisance should be changed.

Persons Testifying: (In support) Representative Ross, prime sponsor; Ken Irwin, Yakima County Sheriff's Office; Micah Cawley, Dave Ettl, and Richard Zais, City of Yakima; Kevin Bouchey, Yakima County; 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.

(With concerns on original bill) Stu Halsan, Washington Land Title Association.

(Opposed) Shankar Narayan, American Civil Liberties Union.

Persons Signed In To Testify But Not Testifying: None.