2432-S2 AMH HURS KOST 046

**2SHB 2432** - H AMD **1186**

By Representative HurstBy Representative HurstBy Representative HurstBy Representative Hurst

On page 2, line 3, after "(3)" insert "Prevention and intervention services that divert young people from gang activity are most effective when the leadership and operation of a gang is interrupted. Civil gang injunctions are a proven tool for interrupting gang activity and operation and allowing prevention and intervention services to succeed.

(4)"

On page 4, after line 21, insert the following:

"NEW SECTION. **Sec. 4.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Criminal street gang" has the same meaning as that term is defined in RCW 9.94A.030.

(2) "Criminal street gang activity" includes: (a) Criminal street gang-related offenses, as defined in RCW 9.94A.030; and (b) noncriminal acts that are in furtherance of a criminal street gang.

(3) "Criminal street gang associate or member" has the same meaning as that term is defined in RCW 9.94A.030. However, in determining whether a person is a criminal street gang associate or member, the court may also consider all relevant evidence including, but not limited to, an admission by a person that he or she is an associate or member of a criminal street gang.

(4) "Pattern of criminal street gang activity" has the same meaning as that term is defined in RCW 9.94A.030.

NEW SECTION. **Sec. 5.** An action seeking injunctive relief under this chapter may be brought by the attorney general, county prosecuting attorney, or city attorney or city prosecutor. If a city seeks injunctive relief under this chapter, the city shall seek and obtain the approval of the prosecuting attorney of the county in which the city is located prior to filing the action.

NEW SECTION. **Sec. 6.** (1) Injunctive relief is authorized to enjoin, abate, and prevent criminal street gang activity.

(2) A party seeking injunctive relief under this chapter may file a complaint in superior court. The complaint must contain: (a) A description of the specific geographic area within which the plaintiff seeks to enjoin the activities of a criminal street gang and its members or associates; and (b) a list of the activities in the geographic area that the plaintiff seeks to enjoin.

(3) Service of the summons and complaint on the criminal street gang may be made by representative service of process, served personally, pursuant to RCW 4.28.080, on at least five adult associates or members of the criminal street gang, at least two of whom occupy a leadership role in the criminal street gang at the time of filing.

(4) The court shall order an evidentiary hearing on the complaint. The hearing may be held whether or not any person served in a representative capacity appears to contest the issuance of the injunction.

(5) A person served in a representative capacity has the right to testify, cross-examine witnesses, and present testimony and other evidence on his or her own behalf. The court must appoint counsel to represent a person who is served in a representative capacity. The plaintiff is responsible for the cost of the representation. A person served in a representative capacity must receive notice of this right to request counsel in the summons.

NEW SECTION. **Sec. 7.** (1) At the hearing, the plaintiff must prove by a preponderance of the evidence that:

(a) A criminal street gang with known leadership, membership, and criminal activities is named as a respondent;

(b) The persons served in a representative capacity are associates or members of the criminal street gang;

(c) The membership of the criminal street gang includes at least five persons, at least two of whom occupy a leadership role at the time of filing;

(d) The criminal street gang has operated in the specified geographic area for at least five years immediately prior to the filing of the complaint;

(e) During the five years immediately prior to the filing of the complaint, associates and members of the criminal street gang have committed a pattern of criminal street gang activity within the specified geographic area;

(f) As a result of the criminal street gang activity, a significant number of the residents of the specified geographic area are in reasonable fear of threats to their physical safety, the physical safety of their family members, or damage to their property, such that the criminal street gang activity interferes with the quiet enjoyment of their residences;

(g) The jurisdiction in which the plaintiff is located has previously offered or is planning to offer prevention and intervention services to divert the associates or members of the criminal street gang from criminal street gang activity; and

(h) The remedies requested are reasonable and necessary.

(2) The plaintiff has a burden to prove by a preponderance of the evidence that any person whose activities are sought to be enjoined is an associate or member of the criminal street gang. The plaintiff may make this showing at the initial hearing or may seek to add a person to an existing injunction at a later date. A person may be added to an injunction previously issued under this chapter regardless of whether the person was a criminal street gang associate or member at the time the complaint was filed or the injunction granted.

NEW SECTION. **Sec. 8.** (1) If the court finds that the plaintiff has met its burden under section 7 of this act, the court shall enter an order:

(a) Specifically describing the geographic boundaries within which the injunction operates; and

(b) Providing for all relief necessary and proper under the circumstances, including enjoining persons who have been proven to be associates or members of the criminal street gang from engaging in the following behaviors and activities:

(i) Associating with other criminal street gang associates or members, except as provided in subsection (2) of this section;

(ii) Intimidating, harassing, threatening, or assaulting any person;

(iii) Intimidating, harassing, threatening, or assaulting any person known to be a victim or witness to criminal street gang activity;

(iv) Possessing a firearm, ammunition, or deadly weapon in a public place or knowingly remaining in the presence of anyone in possession of a firearm, ammunition, or deadly weapon in a public place;

(v) Possessing a controlled substance or drug paraphernalia or knowingly remaining in the presence of anyone in possession of a controlled substance or drug paraphernalia;

(vi) Consuming alcohol in a public place;

(vii) Trespassing;

(viii) Defacing any public or private property or possessing graffiti or tagging tools;

(ix) Violating a curfew imposed by the court;

(x) Using hand or other gestures associated with the criminal street gang;

(xi) Wearing colors or symbols associated with the criminal street gang; or

(xii) Any other behavior or activity that has contributed in the past to the intimidation of the residents of the specified geographic area.

(2) With respect to a condition imposed pursuant to subsection (1)(b)(i) of this section, the condition may not apply to enjoin a person from associating with another criminal street gang associate or member who:

(a) Resides with the person if they are related by blood or marriage or have a dating relationship;

(b) Is married to the person;

(c) Has a child with the person, regardless of whether they have been married; or

(d) Has a biological or legal parent-child, grandparent-child, or sibling relationship with the person.

NEW SECTION. **Sec. 9.** (1) The plaintiff shall provide personal notice of the injunction to any person to whom the injunction applies, as well as notice that he or she may request an evidentiary hearing regarding his or her association with or membership in the criminal street gang.

(2) At the hearing, the plaintiff must show by a preponderance of the evidence that the person is an associate or member of the criminal street gang. The person has the right to testify, cross-examine witnesses, and present testimony and other evidence on his or her own behalf. The court must appoint counsel to represent the person. The plaintiff is responsible for the cost of the representation.

(3) No juvenile may be enjoined under this chapter.

NEW SECTION. **Sec. 10.** (1) A person who violates an order issued under this chapter may be found in contempt of court as provided in chapter 7.21 RCW and subject to the penalties therein, including but not limited to a fine of not more than five thousand dollars or imprisonment for not more than one year, or both.

(2) In addition, a person who willfully violates an injunction issued under this chapter is guilty of a gross misdemeanor punishable by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) If the person did not contest the finding that he or she was a criminal street gang associate or member when originally served with the complaint or a copy of the injunction, it is an affirmative defense to a proceeding under this section that he or she is no longer an associate or member of the criminal street gang.

NEW SECTION. **Sec. 11.** (1) An injunction issued pursuant to this chapter shall be effective for ten years.

(2) The plaintiff may reapply for an extension of the injunction by filing a motion no more than thirty days prior to the expiration of the current injunction. However, the injunction shall not be extended unless the plaintiff meets the burden described in Section 7 of this Act.

NEW SECTION. **Sec. 12.** Nothing in this chapter may be construed to apply to a governmental entity or a nonprofit or charitable organization.

NEW SECTION. **Sec. 13.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 14.** Sections 4 through 12 of this act constitute a new chapter in Title 7 RCW."

Correct the title.

|  |  |
| --- | --- |
|  | EFFECT: Allows prosecutors to file civil injunctions against criminal street gangs and their members. |

**--- END ---**