

HOUSE BILL ANALYSIS

HB 1648

Title: An act relating to declaring buildings used for criminal street gang activity to be a nuisance.

Brief Description: Declaring buildings used for criminal street gang activity to be a nuisance.

Sponsors: Representatives Honeyford, Sheahan, Skinner, Clements, H. Sommers, Boldt, Delvin and Sullivan.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: A variety of public and private nuisance actions are possible to stop activity that is illegal, dangerous, or disruptive to neighboring property owners or to the public generally. Some of these legal remedies were developed at common law many years ago. More recently, the Legislature has also enacted specific statutes to deal with specific kinds of nuisances.

For instance, any place in which any one of a variety of activities is conducted is statutorily declared to be a moral nuisance.— These activities include prostitution, exhibition of lewd films or publications, illegal gambling, fighting, drunkenness, and breach of the peace. A place in which such activity is carried on may be subject to a legal proceeding brought by the prosecutor.

A prosecutor may proceed against a person who maintains a moral nuisance in two ways. First, a prosecutor may file a civil lawsuit against the operator of a moral nuisance or against the owner of the property where the nuisance is maintained. An owner or operator who has knowingly maintained a moral nuisance may be fined up to \$25,000. Second, a prosecutor may initiate abatement procedures against the owner or operator of a moral nuisance. Abatement procedures allow for immediate shutdown of the alleged nuisance pending determination that a moral nuisance actually exists.

In 1988, in part out of concern about the coverage of the existing moral nuisance law, a special drug nuisance law was enacted. That law allows for private or public prosecution of an abatement action against a drug related nuisance.

Recently, gang activity has caused concern in many neighborhoods over the ability of neighbors to control or eliminate such activity.

Summary of Bill: A criminal street gang nuisance law is enacted with provisions substantially the same as those found in the drug nuisance law.

Buildings where criminal street gang activity occurs are declared to be nuisances. A criminal street gang is defined as an ongoing group of three or more people that has as a primary activity the commission of crimes, that has a common name, and whose members individually or collectively engage in a pattern of criminal gang activity. A pattern means commission of two or more crimes, at least one of which occurred after the effective date of this act, that occurred within a year of each other, and that were committed on separate occasions by two or more persons.

A complaint that a building used for conducting criminal street gang activity is a nuisance must be accompanied by a description of the building's adverse impact on the neighborhood. Evidence of adverse impact may consist of such things as: a search warrant has been served on the building resulting in the seizure of evidence of a crime; persons who frequent the property have been arrested; there is increased traffic associated with the property; and complaints about the building have been made to law enforcement agencies. The complaint must also show that efforts have been made to give the owner of the building a chance to stop the nuisance.

A building determined to be a nuisance is to be placed in the custody of the court and is to remain closed for a period of one year unless released sooner by the court.

When a complaint of a nuisance has been filed, a court hearing must be granted within three days. Procedures are set forth for a court to determine if a building is a nuisance and to issue an order of abatement.

Prior to a court hearing, a temporary restraining order or preliminary injunction may be granted if the person seeking the order gives a bond or other security of not less than \$1,000 to pay damages to a person wrongfully restrained.

An order of abatement may not be entered if the owner had no knowledge of the nuisance or has made reasonable efforts to abate the nuisance, has not been guilty of any contempt of court, and will prevent the building from being a nuisance for a period of one year.

An intentional or willful violation of an abatement order is punishable by a fine of not more than \$10,000 and imprisonment for not more than one year, or both.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research