

# SENATE BILL REPORT

## SB 5987

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As Reported By Senate Committee On:  
Judiciary, February 28, 2007

**Title:** An act relating to gang-related offenses.

**Brief Description:** Increasing penalties for gang-related offenses.

**Sponsors:** Senators Clements, Carrell, Marr, Holmquist, Schoesler and Rasmussen; by request of Attorney General.

**Brief History:**

**Committee Activity:** Judiciary: 2/28/07 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5987 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Roach and Weinstein.

**Staff:** Juliana Roe (786-7405)

**Background:** Graffiti is considered a gateway crime. It is a crime that is committed by those attempting to gain admission into or promotion within a gang. Currently, graffiti is charged under the category of malicious mischief; the degree depends on the amount of damage caused in dollars.

Malicious mischief in the first degree occurs if the damage exceeds \$1,500. It is a class B felony. Malicious mischief in the second degree occurs if the damage exceeds \$250. It is a class C felony. Malicious mischief in the third degree occurs if the damage equals \$50 or less. It is a gross misdemeanor.

Proponents believe that more serious gang-related offenses will be decreased by focusing on this type of gang-related property crime, usually committed by juveniles just beginning to involve themselves in criminal behavior.

**Summary of Bill:** "Tagging/gang graffiti" is defined and classified as a gross misdemeanor. This crime is raised to a class C felony if the offender has previously been convicted of this crime, or has previously been convicted of a gang-related offense. The offender will be sentenced in accordance with the sentencing grid. If the offender is convicted of criminal

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attempt, solicitation, or conspiracy, the standard sentencing range is determined by multiplying the range of the completed crime by 75 percent.

The following time will be added to the standard sentence range for felony crimes, if the offender or accomplice is found to be a gang member or associate, and the offense for which the offender is sentenced is a gang-related offense. If the offender is sentenced for more than one offense, the enhancement must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a gang sentence enhancement: (1) two years for a class A felony or with a statutory maximum sentence of at least 20 years, or both; (2) eighteen months for a class B felony or with a statutory maximum sentence of ten years, or both; (3) twelve months for a class C felony or with a statutory maximum sentence of five years, or both; (4) if the offender is sentenced for a gang sentencing enhancement and the offender has previously been sentenced for any gang or deadly weapon enhancement, all enhancements will be twice the amount of time; (5) all gang sentencing enhancements are mandatory, to be served in total confinement, and run consecutively to all other sentencing provisions, even other enhancements; and (6) if the standard range under this section exceeds the statutory maximum sentence for the offense, that sentence will be the presumptive sentence unless the offender is a persistent offender. If the firearm enhancement increases the sentence beyond the statutory maximum for the offense, the enhancement may not be reduced.

The court is required to make a finding of fact if there has been an allegation and evidence establishing that the accused or accomplice were criminal gang members or associates, and that the crime was a gang-related offense. If the case goes to a jury, and the jury finds the defendant or accomplice guilty, the jury is required to find a special verdict as to whether the defendant or accomplice was a gang member or associate and whether the crime was gang-related.

The terms "criminal gang," "criminal gang member or associate," and "gang-related offense" are defined.

The Attorney General's Office is directed to establish a work group to evaluate gang-related crime in Washington State. All findings and recommendations are to be reported to the Legislature by January 1, 2008.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary):** All sections relating to the creation of a new crime of gang-related graffiti and tagging and the coinciding enhancements are removed. The Office of the Attorney General is directed to establish a work group to evaluate the problem of gang-related crime in Washington State. Results of the evaluation must be reported to the Legislature on or before January 1, 2008.

**Appropriation:** None.

**Fiscal Note:** Requested on February 19, 2007.

**Committee/Commission/Task Force Created:** Yes.

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

**Staff Summary of Public Testimony:** PRO: It is important to collect data about gang activity in Washington State. This can be accomplished by establishing a work group to evaluate this problem.

The gang violence in Washington, and around the nation, is escalating both on the street and in the prison system. Gangs are becoming more organized and deal in areas such as drugs, prostitution, and racketeering. They are also crossing state lines. Washington is not prepared to deal with these problems.

Citizens of Yakima, even in the rural areas, fear: going out at night; leaving their doors unlocked; and going downtown. Graffiti shows that gangs are present and citizens fear the gangs and, in turn, the citizens fear frequenting these businesses in downtown Yakima. Block watches have been established and citizens are actively trying to diminish the gang activity. A message needs to be sent that gang activity will not be tolerated. We need to start at the ground level. Offenders start out with graffiti and escalate to more egregious crimes. Failing to support this bill fails our citizens.

Gang related crime prosecution is frustrated in many ways due to the lack of legislation in this area. Witnesses are reluctant to testify. Witnesses and jurors are intimidated in the courtroom and on the street. The jury needs to know that these crimes are gang related.

**Persons Testifying:** PRO: Senator Clements, prime sponsor; Rob McKenna, Attorney General; Sam Granato, Chief of Police in Yakima; Pam Wickersham, Judy Lydin, Sharon Marrow, citizens; Julie Schilling, Westside Merchants Association; Tarin Miller, officer for city of Yakima gang unit; Cynthia Martinez, prosecutor for city of Yakima.