
SUBSTITUTE HOUSE BILL 2550

State of Washington

61st Legislature

2010 Regular Session

By House Public Safety & Emergency Preparedness (originally sponsored by Representatives Ross, Schmick, and Warnick)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to abatement of nuisances involving criminal street
2 gang activity; adding a new chapter to Title 9 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Notwithstanding the provisions of any other
6 law or ordinance, the legislative authority of a county or municipality
7 may, by ordinance, to protect the public health, safety, and welfare of
8 the residents of the county or municipality, adopt procedures pursuant
9 to which a public agency may file a nuisance action in superior court
10 to seek any or all of the forms of relief detailed in this chapter.
11 The legislative authority of a county or municipality may further
12 authorize and adopt rules providing for a nuisance action instituted by
13 a person who resides, works in, or owns property in the same
14 multifamily building or apartment complex or within a one-block radius
15 of the property where the nuisance is alleged to exist. A nuisance
16 action instituted by a person may only be brought against a building or
17 a unit within a building as defined in section 2 of this act. A
18 nuisance action authorized under this section is subject to the
19 provisions set forth in sections 2 through 14 of this act.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Building" includes, but is not limited to, any structure or
4 separate part or portion thereof, whether permanent or not, or the
5 ground itself.

6 (2) "Criminal street gang activity" means a pattern of criminal
7 street gang activity as defined in RCW 9.94A.030.

8 (3) "Criminal street gang associate or member" and "criminal street
9 gang-related offense" have the meaning prescribed in RCW 9.94A.030.

10 (4) "Public agency" includes a county, city, town, municipal
11 corporation, and an office, department, division, or agency thereof.

12 NEW SECTION. **Sec. 3.** An ordinance may authorize a nuisance action
13 providing for a restraining order, preliminary injunction, or permanent
14 injunction against a specific criminal street gang associate or member
15 to enjoin his or her activity that is associated with any criminal
16 street gang activity or any criminal street gang-related offense and
17 that is occurring within the county or municipality.

18 NEW SECTION. **Sec. 4.** An ordinance may authorize a nuisance action
19 providing for a restraining order, preliminary injunction, or order of
20 abatement against any building or unit within a building used for the
21 purpose of aiding, promoting, or conducting criminal street gang
22 activity. In a multiunit building, only the offending unit shall be
23 declared a nuisance, and only the offending unit shall be enjoined,
24 abated, and prevented. Nothing in this chapter applies to property
25 used for the purpose of, or activity involved in, providing health
26 services, food and financial assistance, treatment, counseling,
27 training, religious services, education, civic involvement, or any
28 social service or charitable assistance.

29 NEW SECTION. **Sec. 5.** (1) Upon application for a temporary
30 restraining order or preliminary injunction, the court may, upon a
31 showing of good cause, (a) issue an ex parte restraining order or
32 preliminary injunction, preventing the defendant and all other persons,
33 other than the legal owner, from removing or in any manner interfering
34 with the personal property and contents of the place where the nuisance
35 is alleged to exist, and (b) grant preliminary equitable relief as is

1 necessary to prevent the continuance or recurrence of the nuisance
2 pending final resolution of the matter on the merits. Such ex parte
3 restraining order or preliminary injunction may remain in effect no
4 more than fifteen days from the date of issuance, except as provided in
5 section 7 of this act.

6 (2) The restraining order or preliminary injunction issued under
7 subsection (1) of this section in an action under section 3 of this act
8 must be served on the defendant personally, or by leaving a copy at the
9 dwelling house or usual place of abode of the defendant with any person
10 of suitable age and discretion residing therein. Where such a person
11 cannot with reasonable diligence be served as described, the
12 restraining order or preliminary injunction may be served by posting a
13 copy in a conspicuous place at the dwelling house or usual place of
14 abode of the defendant and thereafter mailing a copy by registered mail
15 to the defendant at his or her usual mailing address.

16 (3) The restraining order or preliminary injunction issued under
17 subsection (1) of this section in an action under section 4 of this act
18 must be served on the occupant and the owner of the building or unit
19 personally, or by leaving a copy with any person of suitable age and
20 discretion who is in charge of the property or who is residing at the
21 property. Where such a person cannot with reasonable diligence be
22 served as described, the restraining order or preliminary injunction
23 may be served by posting a copy in a conspicuous place on the property
24 and thereafter mailing a copy by registered mail to the person to be
25 served at his or her usual mailing address. Additionally, a copy of
26 the restraining order or preliminary injunction must be sent by
27 registered mail to the owner of the building.

28 NEW SECTION. **Sec. 6.** An action under this chapter shall have
29 precedence over all other actions, except prior matters of the same
30 character, actions under chapter 7.43 RCW, criminal proceedings,
31 election contests, hearings on temporary restraining orders and
32 injunctions, child dependency hearings, foreclosures by a legal owner,
33 actions to forfeit vehicles used in violation of the uniform controlled
34 substances act, and any other case determined to be a priority by
35 statute or by the court.

1 NEW SECTION. **Sec. 7.** A copy of the complaint, together with a
2 notice of the time and place of the hearing of the action, shall be
3 served upon the defendant at least six business days before the
4 hearing, and as provided for in section 5 of this act. If the hearing
5 is then continued at the request of any defendant, all temporary orders
6 and injunctions shall be extended as a matter of course.

7 NEW SECTION. **Sec. 8.** (1) Except as provided in subsection (2) of
8 this section, (a) if the existence of the nuisance under section 3 of
9 this act is established in the action, a permanent injunction must be
10 entered as part of the final judgment in the case, and (b) if the
11 existence of the nuisance under section 4 of this act is established in
12 the action, an order of abatement must be entered as part of the final
13 judgment in the case. The plaintiff's costs in the action, including
14 those of abatement, are a lien upon the building or unit within a
15 building to the extent of the owner's interest. The lien must be filed
16 as a judgment summary stating the name of the owner and the legal
17 description of the real property. The lien must be recorded and
18 enforced as a judgment summary.

19 (2) If the court finds and concludes that the owner of the building
20 or unit within a building:

21 (a) Had no knowledge of the existence of the nuisance or has been
22 making reasonable efforts to abate the nuisance;

23 (b) Has not been guilty of any contempt of court in the
24 proceedings; and

25 (c) Will immediately abate any such nuisance that may exist at the
26 building or unit within a building and prevent it from being a nuisance
27 for a period of one year thereafter, the court shall, if satisfied with
28 the owner's good faith, order the building or unit within a building to
29 be delivered to the owner, and no order of abatement shall be entered.
30 If an order of abatement has been entered and the owner subsequently
31 meets the requirements of this subsection, the order of abatement shall
32 be canceled.

33 (3) For the purposes of determining whether the owner of the
34 building or unit within a building made reasonable efforts to abate the
35 nuisance, the court shall consider such factors as whether the owner:

36 (a) Terminated or attempted to terminate the tenancy or lease of a

1 tenant or leaseholder where the nuisance is occurring, if the tenant or
2 leaseholder is involved in the criminal street gang activity;

3 (b) Placed restrictions on the rental agreement or lease;

4 (c) Adopted feasible measures on the property to try to prevent the
5 criminal street gang activity;

6 (d) Cooperated with law enforcement to attempt to stop the criminal
7 street gang activity; and

8 (e) Made other efforts the court finds relevant.

9 (4) In an action filed under section 4 of this act, if the court
10 finds there is insufficient evidence to establish the existence of the
11 nuisance, the court may order the person who filed the complaint to pay
12 the owner reasonable attorneys' fees and costs to defend the action,
13 any loss of rent or revenue experienced as a result of the action,
14 restraining order, or preliminary injunction, and damages up to five
15 hundred dollars each.

16 NEW SECTION. **Sec. 9.** Any final order of abatement issued under
17 this chapter must:

18 (1) If the building or unit is not subject to the interests of
19 innocent legal owners, provide for the immediate closure of the
20 building or unit within a building against its use for any purpose, and
21 for keeping it closed for a period of one year unless released sooner
22 as provided in this chapter;

23 (2) State that while the order of abatement remains in effect, the
24 building or unit within a building shall remain in the custody of the
25 court; and

26 (3) Authorize a law enforcement officer to enter the building or
27 unit within a building to create an inventory of the personal property
28 and contents located in the building or unit within a building for
29 submission to the court.

30 NEW SECTION. **Sec. 10.** An intentional violation of a restraining
31 order, preliminary injunction, permanent injunction, or order of
32 abatement in an action brought by a public agency under this chapter is
33 a misdemeanor and shall be punishable as such. If the violation also
34 constitutes a criminal offense under another provision of the law, the
35 violation may be prosecuted pursuant to this section or the other
36 provision of law, or both.

1 NEW SECTION. **Sec. 11.** Whenever the owner of a building or unit
2 within a building upon which the act or acts constituting the contempt
3 have been committed, or the owner of any interest in the building or
4 unit has been found in contempt of court, and fined in any proceedings
5 under this chapter, the fine is a lien upon the building or unit within
6 a building to the extent of the owner's interest. The lien must be
7 filed as a judgment summary stating the name of the owner and the legal
8 description of the real property. The lien must be recorded and
9 enforced as a judgment summary.

10 NEW SECTION. **Sec. 12.** An action may not be brought pursuant to
11 this section against any governmental entity or any charitable or
12 nonprofit organization that is conducting, with ordinary care and
13 skill, activities relating to prevention or education concerning
14 criminal street gangs.

15 NEW SECTION. **Sec. 13.** The abatement of a nuisance under this
16 chapter does not prejudice the right of any person to recover damages
17 for its past existence.

18 NEW SECTION. **Sec. 14.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act
23 constitute a new chapter in Title 9 RCW.

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