

SENATE BILL REPORT

ESSB 5742

As Passed Senate, March 11, 2009

Title: An act relating to crime-free rental housing.

Brief Description: Concerning crime-free rental housing.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, McCaslin, Hobbs, Schoesler and Hatfield).

Brief History:

Committee Activity: Human Services & Corrections: 2/12/09, 2/23/09 [DPS, w/oRec].
Passed Senate: 3/11/09, 46-1.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5742 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Kauffman and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland and Carrell.

Staff: Shani Bauer (786-7468)

Background: Crime Free Rental Housing Program. The Crime Free Rental Housing Program (program) is based on the Crime Free Multi-Housing Program that was developed in Arizona in 1992. The program has since been adopted and utilized by many different cities across the country. Generally, the program consists of three phases:

1. Landlord Training – educating landlords and property managers in the basics of crime prevention on their premises;
2. Crime Prevention Through Environmental Design – a walk through of the property by crime prevention specialists to identify crime hazards and steps the landlord can take to improve the safety of the premises; and
3. Crime-Free Commitment – the landlord committing to maintain crime-free activities such as proper screening of tenants, having tenants sign a crime-free addendum to the rental agreement, and maintaining open communication with law enforcement.

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.

Several cities in the state of Washington have adopted the program. Many of the cities have a certification process. By participating in the program and maintaining its commitments, the landlord's housing is certified as "Crime-Free." The landlord can then use this phrase in advertising that landlord's rentals. Some cities in the state have passed ordinances making the program mandatory.

Termination of Tenancy. The Residential Landlord-Tenant Act establishes various duties of landlords and tenants and provides remedies when those duties are not met. Those duties include an obligation not to engage in certain criminal activity including:

1. drug-related activity;
2. gang-related activity; and
3. other activities resulting in arrest that are imminently hazardous to the physical safety of other persons that entail a physical assault or the unlawful use of a firearm or deadly weapon.

If the tenant engages in one of the above activities, the landlord does not have to give the tenant a 30-day notice in which to cure the lack of compliance and may proceed immediately to an unlawful detainer action. An unlawful detainer action allows the landlord to evict the tenant and regain possession of the property if the tenant does not vacate the property after being served with a notice to vacate.

Summary of Engrossed Substitute Bill: A city, town, or county may establish a local government crime-free rental housing program to reduce the incidence of crime on rental properties. Except as otherwise provided, a crime-free rental housing program must be voluntary and may include:

- landlord training to educate property owners and managers in the basics of crime prevention;
- a crime prevention through environmental design walk-through to identify crime hazards; and
- commitments to implement and maintain crime-free activities.

A crime-free rental housing program may not:

- prohibit a landlord from hiring or renting to individuals with criminal backgrounds;
- condition a business license or any other pre-requirement to owning or operating rental property or participation in a program; or
- except as specifically provided, charge additional or separate fees to a landlord who does not participate.

In exchange for participation in the program, a local government may waive the greater of the cost of a landlord's business license or rental registration fee if the cost is the same as a standard business license or rental registration fee in the jurisdiction or \$750. Nothing in this section prohibits a landlord from charging a fee for participation in the program.

A local government may charge the landlord a fee for law enforcement services or require a landlord to participate in a crime-free rental housing program if law enforcement has investigated criminal activity on the rental premises three times within a three-month period and the landlord has not made a good faith effort to deter the criminal activity. Steps which may constitute a good faith effort are defined.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This legislation defines what a rental housing program may or may not include. Landlords wouldn't be seeking this legislation if they weren't being asked to intervene in tenant activities. Several crime free programs across the state are mandatory. Landlords can get charged fines and fees for having police come to their property. This discourages landlords from renting to populations who may have criminal histories and who also need a place to live. Eviction is not currently allowed under the law for any type of criminal activity, but yet cities are requiring this. Landlord groups support crime free housing, but don't agree with the government imposing requirements on them, particularly where they don't have the tools to comply.

These crime free programs need to be voluntary. Many programs require participation in order for the landlord to get a business license. Additionally, we don't think it is appropriate to dictate what tenant screening standards a property owner should have or who they can employ. New section 4 in this legislation is based directly on the criminal activity provision currently in the Mobile-Home Tenant Act. This provision is used effectively all over the state in manufactured housing communities when a tenant engages in criminal activity. Those provisions also require that an arrest record be given to the landlord for use in an eviction proceeding. We are asking that this provision also be put into the Landlord Tenant Act.

Yakima has a terrible drug and crime program. Landlords began looking for a tool to help prevent crime on their premises and heard about crime free programs being utilized in Walla Walla and Lacey with success. Landlords liked the fact that it was voluntary and provided incentives. Although these programs reduce crime and, ultimately, costs for the city, Yakima believed that this would cost money to implement. A landlord may not know when criminal activity is going on and the police don't necessarily notify them. This was the point of contention between the city and landlords in Yakima; however, the city wants to charge landlords for criminal activity and providing police protection.

CON: Each city is different and takes different approaches to enforcement depending on the condition and finances of the community. Des Moines was overrun by criminal activity. As gangs proliferated into the community, they had to find alternative means to deal with them. That is when the crime free rental ordinances were passed. The best way to implement the program is to make it mandatory. It requires every landlord to work in partnership with law enforcement. In this way, law enforcement gets to know all the managers and all the owners. There are lots of absentee landlords and managers. The city has no way to make them participate in the program. From 2002-2004 the city experienced a double-digit increase in crime. Over the next two years, the crime rate dropped 30 percent. It is a requirement that a landlord cannot hire someone who has been convicted. The ordinance talks about renting to active criminals.

We have three concerns. One, Section 2 will encourage landlords not to hire or rent to anyone with a criminal record. This has no bearing on whether a person can meet that person's rental obligations. Second, the provision of Section 3 mandating disclosure information related to criminal activity has the potential for violating privacy laws. Third, Section 4 is written so broadly that it would allow landlords to commence eviction immediately even if the person is not guilty of the crime. This bill allows a landlord to move forward without even a preponderance of the evidence that a crime occurred. The only need is to have a report by law enforcement. Provisions in the current Landlord Tenant Act are drafted carefully to balance the rights of both landlord and tenant.

OTHER: The Lacey program has been very successful in reducing crime in rental housing in the community. Some of the provisions in this bill would be problematic for Lacey's program. Subsection (2)(e) would virtually eliminate how the program operates. As part of the program, they ask that the landlord do tenant screening and maintain background checks. The program started because landlords were asking for help. This is a partnership between landlords and the police. Lacey doesn't have a fee for participating in the program, but charges a fee for a business license. The city will waive the license fee if the landlord participates in the program. This program also benefits those families who have to live in multi-family housing and have to live next door to drug and gang activity. At the end of the day, the landlord can choose who to rent to and who to hire. The program is designed to urge landlords to be informed as to who is on their property. The main concern is preventing criminal activity on property and not necessarily renting to those who might have a criminal background. This program ultimately works in reducing crime. One particular complex of 26 units had 300 police calls per year, ten calls per unit. This was reduced to three calls per unit within a period of six months after participation in the program. Part of the program is plugging people into the system and getting them the support that they need.

Persons Testifying: PRO: Julie Johnson, John Woodring, Rental Housing Association; Charles Beck, Washington Landlord Association; Roy Newbry, Yakima Valley Landlords Association.

CON: Roger Baker, Des Moines Police Department; Greg Provenzano, Columbia Legal Services; Pat Tassoni, Thurston County Tenants Union.

OTHER: Dave Campbell, Dusty Pierpoint, Miguel Stansbury, Lacey Police.