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**SUBSTITUTE HOUSE BILL 2594**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** House Public Safety & Emergency Preparedness (originally sponsored by Representatives Hurst, Ross, Blake, Johnson, Dunshee, Pearson, Takko, Dahlquist, Van De Wege, Angel, Walsh, McCune, Nealey, Kirby, Schmick, Kelley, Wilcox, Haigh, Chandler, Armstrong, Bailey, Sequist, Warnick, Hudgins, Eddy, Springer, Miloscia, Finn, Probst, Morris, Lias, Moeller, Orwall, Dammeier, Parker, and Hargrove)

READ FIRST TIME 01/31/12.

1           AN ACT Relating to criminal street gangs; adding a new chapter to  
2 Title 7 RCW; and prescribing penalties.

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

4           NEW SECTION.   **Sec. 1.** The legislature finds that increasing gang  
5 violence has negatively impacted quality of life in communities across  
6 the state. Gangs harass and intimidate the residents of the  
7 neighborhoods where they operate, and their criminal activities  
8 undermine local economies.

9           The legislature further finds that strong prevention and  
10 intervention services that divert gang associates and members from gang  
11 activity are essential to reducing gang violence. Prevention and  
12 intervention services are most effective when gang activity is  
13 interrupted. Civil gang injunctions are a proven tool for interrupting  
14 gang activity and allowing prevention and intervention services to  
15 succeed.

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

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

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

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

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

14 NEW SECTION. **Sec. 3.** An action seeking injunctive relief under  
15 this chapter may be brought by the attorney general, county prosecuting  
16 attorney, or city attorney or city prosecutor. If a city seeks  
17 injunctive relief under this chapter, the city shall seek and obtain  
18 the approval of the prosecuting attorney of the county in which the  
19 city is located prior to filing the action.

20 NEW SECTION. **Sec. 4.** (1) Injunctive relief is authorized to  
21 enjoin, abate, and prevent criminal street gang activity.

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

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

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

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

8 NEW SECTION. **Sec. 5.** (1) At the hearing, the plaintiff must prove  
9 by a preponderance of the evidence that:

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

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

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

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

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

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

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

34 (h) The remedies requested are reasonable and necessary.

35 (2) The plaintiff has a burden to prove by a preponderance of the  
36 evidence that any person whose activities are sought to be enjoined is  
37 an associate or member of the criminal street gang. The plaintiff may

1 make this showing at the initial hearing or may seek to add a person to  
2 an existing injunction at a later date. A person may be added to an  
3 injunction previously issued under this chapter regardless of whether  
4 the person was a criminal street gang associate or member at the time  
5 the complaint was filed or the injunction granted.

6 NEW SECTION. **Sec. 6.** (1) If the court finds that the plaintiff  
7 has met its burden under section 5 of this act, the court shall enter  
8 an order:

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

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

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

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

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

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

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

28 (vi) Consuming alcohol in a public place;

29 (vii) Trespassing;

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

32 (ix) Violating a curfew imposed by the court;

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

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

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

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

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

10 (b) Is married to the person;

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

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

15 NEW SECTION. **Sec. 7.** (1) The plaintiff shall provide personal  
16 notice of the injunction to any person to whom the injunction applies,  
17 as well as notice that he or she may request an evidentiary hearing  
18 regarding his or her association with or membership in the criminal  
19 street gang.

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

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

27 NEW SECTION. **Sec. 8.** (1) A person who violates an order issued  
28 under this chapter may be found in contempt of court as provided in  
29 chapter 7.21 RCW and subject to the penalties therein, including but  
30 not limited to a fine of not more than five thousand dollars or  
31 imprisonment for not more than one year, or both.

32 (2) In addition, a person who willfully violates an injunction  
33 issued under this chapter is guilty of a gross misdemeanor punishable  
34 by imprisonment in the county jail for a maximum term fixed by the  
35 court of up to three hundred sixty-four days, or by a fine in an amount

1 fixed by the court of not more than five thousand dollars, or by both  
2 such imprisonment and fine.

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

8 NEW SECTION. **Sec. 9.** Nothing in this chapter may be construed to  
9 apply to a governmental entity or a nonprofit or charitable  
10 organization.

11 NEW SECTION. **Sec. 10.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act constitute  
16 a new chapter in Title 7 RCW.

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