

House Research Act Summary

CHAPTER: 150

SESSION: 2007 Regular Session

TOPIC: Public Nuisance Gang Activity

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Overview

This act classifies certain gang activities and the use of certain places for gang activities as a public nuisance. A county or city attorney, or the attorney general, may file a suit to stop the nuisance-creating activity or accommodation of the activity. A court may additionally order reasonable requirements to prevent future gang activities.

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- 1** **Definitions.** Defines "continuously or regularly," "criminal gang," "gang activity," and "place." A "place" is defined to include both specific structures and, under certain conditions, parcels of land that do not contain structures.
- 2** **Public Nuisance Activities.** Classifies as a public nuisance a criminal gang that engages in at least three separate incidents or occurrences of gang activities over a period of 12 months. Also classified as a public nuisance is the use of a place by a lessee or tenant to engage in or allow gang activity, provided that the owner or person responsible for maintaining the place knowingly permits the activity.
- 3** **Lawsuit for Abatement.** Permits a county or city attorney, or the attorney general to seek an injunction against the continued nuisance activity. The suit may be brought against a member of the gang, or against the owner or person responsible for maintaining the place. A suit against an owner or other responsible person must follow existing statutory notice and opportunity-for-abatement procedures as established in sections 617.81 to 617.87.
- 4** **Court Order.** Permits a court to issue a temporary or permanent injunction preventing the particular defendant from engaging in gang activities, or imposing other reasonable

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requirements to prevent the defendant from engaging in future gang activities. A court may also order reasonable requirements to prevent the use of a place for gang activity, including the cancellation of any applicable lease that may involve any tenant or lessee who has maintained or conducted the nuisance.

A "reasonable requirement" means a limitation on gang behavior and social interaction that reduces the opportunity for gang activity that is also consistent with constitutional freedoms.

5 Penalties. Provides that a person violating an injunctive order is subject to a civil contempt fine of between \$1,000 and \$10,000. Any person who knowingly violates an injunctive order is guilty of a misdemeanor.

6 Attorney's Fees. Permits the court to award reasonable attorney's fees and costs to the prevailing party.

7 Evidence. Proof that criminal gang activity continuously or regularly occurs at a place, or proof that a place is continuously or regularly used for engaging in gang activity by a member of a criminal gang is prima facie evidence that the owner or person responsible for maintaining the particular place knowingly permitted the activity to occur.

An owner or person responsible for maintaining a place may offer, as an affirmative defense, proof by a preponderance of the evidence that the person has made reasonable efforts to prevent the activity from occurring.