

- SUBJECT:** Longer period to show gang activity as public nuisance
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 6 ayes — Rose, King, Martinez Fischer, Raymond, Strama, Talton
0 nays
3 absent — Nixon, Madden, Woolley
- WITNESSES:** For — Adriana H. Biggs, Bexar County District Attorney's Office;
Clifford C. Herberg, Jr., Bexar County and the Bexar County District
Attorney's Office

Against — None
- BACKGROUND:** Under Civil Practice and Remedies Code, sec. 125.062, a combination or criminal street gang that continuously or regularly associates in gang activities is considered a public nuisance. Civil Practice and Remedies Code, sec. 125.061(2), defines continuously or regularly as at least five times in a period of not more than six months.

Penal Code, sec. 71.01, defines a combination as three or more persons who collaborate in carrying on criminal activities. It defines a criminal street gang as three or more people with a common identifying sign or symbol or an identifiable leadership and who continuously or regularly commit criminal activities.

Civil Practice and Remedies Code, sec. 125.061, defines gang activity as unlawful possession of a controlled substance or other item under the Texas Controlled Substances Act or one of the following Penal Code offenses: organized criminal activity; terroristic threat; coercing, soliciting, or inducing gang membership; criminal trespass; disorderly conduct; criminal mischief that causes damages of \$500 or more; certain graffiti offenses; and certain weapons offenses.

Prosecutors, the attorney general, or individuals may file a civil lawsuit to stop a public nuisance. If a court finds that a combination or criminal street gang constitutes a public nuisance, the court may order a defendant

to stop engaging in the gang activities and impose other reasonable requirements to prevent gang activities.

Under Civil Practice and Remedies Code, sec. 125.063, the habitual use of a place by a combination or criminal street gang for gang activities also is considered a public nuisance. If a court finds that a place habitually is used in a way that constitutes a public nuisance, it may order reasonable requirements to prevent the use of the place for gang activity.

DIGEST: HB 68 would change from six months to 12 months the length of time that could be considered to determine whether a combination or street gang has continuously or regularly been associating in gang activities considered a public nuisance.

The bill would take effect September 1, 2005, and would apply only to gang activity that occurred on or after that date or in the six-month period immediately preceding it.

SUPPORTERS SAY: HB 68 is necessary so that the civil law being used to curtail serious gang activity and to stop gangs from committing crimes could be used more effectively. Current law allows prosecutors to ask courts to order gang members who commit crimes when they are together to stop associating with each other in public and to impose other conditions on them. These orders often are called gang injunctions.

Current law requires that before issuing a gang injunction, prosecutors must prove that gang members have committed certain crimes at least five times within a six-month period. However, if a murder occurred in January, gang members might keep a low profile for 30 or 60 days, then resume criminal activities in the spring. At the same time, four additional crimes occurring within the next few months would have to be identified and investigated, the crimes linked to individual gang members, and the lines of conspiracy among the members identified. If the fifth crime occurred six months and one day after the January murder, prosecutors would not be able to count five crimes within six months.

HB 68 would address this problem by lengthening the time frame within which crimes must occur to be counted as one of the five incidents that could prove a public nuisance. This would allow prosecutors to present to courts a more accurate snapshot of a gang's activities.

The gang injunction statute has reduced the number of crimes committed by gangs in Bexar County and other jurisdictions, and HB 68 would make this tool even more successful. Since 2000, courts in Bexar County have issued six gang injunctions. Injunctions typically prohibit individual gang members from associating with each other in public within a designated safety zone and prohibit them from specific activities such as using cell phones or pagers. In one area, crime dropped 25 percent within 60 days of an injunction, and in another the murder rate has dropped 66 percent since law enforcement officers began using the injunctions.

Gang injunctions are not issued for unrelated events or lawful activities and are not used to restrict people who are not engaging in criminal gang activity. The injunctions are used only to restrict the public, not private, actions of people who commit crimes when together. Law enforcement officers must show that people are engaging in specific, organized criminal activity, and the criminal events must be related. HB 68 would not change these stringent requirements and would not allow prosecutors to link unrelated events or people who are not part of organized criminal activity.

HB 68 would be the wrong place to raise concerns about the appropriateness or constitutionality of current law because the bill simply would modify a policy that already has been upheld by courts.

OPPONENTS
SAY:

HB 68 would make a bad law worse by giving law enforcement officers even more latitude to tie together events that may be unrelated and to use those events to restrict individuals' lawful actions. By extending the time during which events could occur to be considered part of a nuisance injunction, HB 68 would allow law enforcement officers to cast a broader net and expand the pool of law-abiding people who could come into contact with gang members – such as girlfriends or family members – and end up tied to alleged criminal activity. These people could then be subject to a gang injunction when they are not a part of a gang's criminal activity.

The bill would encourage even more use of the civil statutes and gang injunctions when law enforcement officers should be using criminal laws to prosecute people if they are guilty of crimes. This could distract law enforcement officers from prosecuting actual crimes and inappropriately focus them on individuals' relationships.

HB 68 is unnecessary because law enforcement officers in Bexar County and other places report that current law has been successful. The six-month restriction in current law ensures that criminal activities of gang members subject to these injunctions are closely tied and related. Law enforcement officers should have to continue to operate within these parameters.