

Amendment No. 845

Senate Amendment to Assembly Bill No. 335 First Reprint (BDR 15-85)

Proposed by: Senator Care

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date				
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

NCA/BAW



Date: 5/18/2009

A.B. No. 335—Makes various changes relating to criminal gangs. (BDR 15-85)



ASSEMBLY BILL NO. 335—ASSEMBLYMEN PARNELL, ANDERSON; CARPENTER, COBB, DONDERO LOOP, GUSTAVSON, HAMBRICK, MCARTHUR, MORTENSON, OHRENSCHALL AND SEGERBLOM

MARCH 13, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to nuisances and criminal gangs. (BDR ~~H~~ 3-85)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility. Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal gangs; ~~enhancing penalties and providing for the suspension of drivers' licenses for certain crimes committed to promote criminal gang activity;~~ making various changes relating to nuisances and criminal gangs; ~~providing penalties;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Under existing law, a person who commits a felony to promote the activities of a criminal gang is subject to an additional penalty under certain circumstances. (NRS 193.168) Section 1 of this bill provides that if a person commits a crime normally punishable as a misdemeanor or gross misdemeanor to promote the activities of a criminal gang and if the person has previously been convicted of at least three similar violations, then: (1) the person may be found guilty of a category E felony; and (2) the driver's license of the person may be suspended for a certain period. Section 2 of this bill clarifies that if a person is subject to the increased penalty provided in section 1, the person is not subject to certain other additional penalties. (NRS 193.169)~~

Existing law provides that certain places used for certain illegal activities constitute a private nuisance, which creates civil liability and allows any person whose property is affected to bring a civil action to abate the nuisance and recover damages. (NRS 40.140) **Section 3** of this bill provides that a building or place regularly and continuously used by the members of a criminal gang to engage in, or facilitate the commission of, crimes by the criminal gang constitutes such a private nuisance. Existing law also provides that certain places used for certain illegal activities constitute a public nuisance, and any person responsible for such a public nuisance who does not abate the public nuisance is guilty of a misdemeanor. (NRS 202.450, 202.470) **Section 5** of this bill provides that a building or place regularly and continuously used by the members of a criminal gang to engage in, or facilitate the commission of, crimes by the criminal gang constitutes such a public nuisance.

Sections 6 and 7 of this bill authorize the board of county commissioners of a county and the governing body of a city to adopt an ordinance authorizing the filing of a civil action, under certain circumstances, to: (1) enjoin the activities of a specific member of a criminal gang; and (2) recover money damages, attorney's fees and costs against a member of a

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25 criminal gang and the owner of a business or place that constitutes a nuisance because the
26 building or place is regularly and continuously used by the members of a criminal gang to
27 engage in, or facilitate the commission of, crimes by the criminal gang. Sections 6 and 7 also
28 provide that a member of a criminal gang who is subject to an injunction and who knowingly
29 and intentionally commits a material violation of that injunction is guilty of a misdemeanor.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** ~~[Chapter 193 of NRS is hereby amended by adding thereto a new~~
2 ~~section to read as follows:~~

3 ~~1. Except as otherwise provided in NRS 193.169, if~~

4 ~~(a) A person commits a violation of a statute that is punishable as a~~
5 ~~misdemeanor or gross misdemeanor pursuant to that statute;~~

6 ~~(b) The person commits that violation knowingly for the benefit of, at the~~
7 ~~direction of, or in affiliation with, a criminal gang, with the specific intent to~~
8 ~~promote, further or assist the activities of the criminal gang; and~~

9 ~~(c) The person has previously been convicted of at least three similar~~
10 ~~violations;~~

11 ~~the person may be deemed to be guilty of a category E felony and may be~~
12 ~~punished as provided in NRS 193.130.~~

13 ~~2. If a person is punished pursuant to this section, the court may, in~~
14 ~~addition to any other penalty imposed, issue an order suspending the driver's~~
15 ~~license of the person for not less than 6 months but not more than 2 years and~~
16 ~~requiring the person to surrender all driver's licenses then held by the person. If~~
17 ~~the person does not possess a driver's license, the court may issue an order~~
18 ~~prohibiting the person from applying for a driver's license for not less than 6~~
19 ~~months but not more than 2 years. If the court issues an order pursuant to this~~
20 ~~subsection, the court shall, within 5 days after issuing the order, forward to the~~
21 ~~Department of Motor Vehicles any licenses, together with a copy of the order.~~

22 ~~3. The court shall not punish a person pursuant to this section unless:~~

23 ~~(a) The indictment, information or complaint charging the person with the~~
24 ~~violation specifically indicates that the State is seeking to punish the person~~
25 ~~pursuant to this section and specifically alleges that the violation was committed~~
26 ~~knowingly for the benefit of, at the direction of, or in affiliation with, a criminal~~
27 ~~gang, with the specific intent to promote, further or assist the activities of the~~
28 ~~criminal gang; and~~

29 ~~(b) The trier of fact finds that allegation to be true beyond a reasonable~~
30 ~~doubt;~~

31 ~~4. In any proceeding to punish a person pursuant to this section, expert~~
32 ~~testimony is admissible to show particular conduct, status and customs indicative~~
33 ~~of criminal gangs, including, but not limited to:~~

34 ~~(a) Characteristics of persons who are members of criminal gangs;~~

35 ~~(b) Specific rivalries between criminal gangs;~~

36 ~~(c) Common practices and operations of criminal gangs and the members of~~
37 ~~those gangs;~~

38 ~~(d) Social customs and behavior of members of criminal gangs;~~

39 ~~(e) Terminology used by members of criminal gangs;~~

40 ~~(f) Codes of conduct, including criminal conduct, of particular criminal~~
41 ~~gangs; and~~

42 ~~(g) The types of crimes that are likely to be committed by a particular~~
43 ~~criminal gang or by criminal gangs in general.~~

~~5. As used in this section, "criminal gang" has the meaning ascribed to it in NRS 193.168.1 (Deleted by amendment.)~~

Sec. 2. ~~[NRS 193.169 is hereby amended to read as follows:~~

~~193.169 1. A person who is sentenced to an additional term of imprisonment pursuant to the provisions of subsection 1 of NRS 193.161, NRS 193.162, 193.163, 193.165, 193.166, 193.167, 193.1675, 193.168, subsection 1 of NRS 193.1685, NRS 453.3325, 453.3345, 453.3351 or subsection 1 of NRS 453.3353 must not be sentenced to an additional term of imprisonment pursuant to any of the other listed sections even if the person's conduct satisfies the requirements for imposing an additional term of imprisonment pursuant to another one or more of those sections.~~

~~2. A person who is sentenced to an alternative term of imprisonment pursuant to subsection 3 of NRS 193.161, subsection 3 of NRS 193.1685 or subsection 2 of NRS 453.3353 must not be sentenced to an additional term of imprisonment pursuant to subsection 1 of NRS 193.161, NRS 193.162, 193.163, 193.165, 193.166, 193.167, 193.1675, 193.168, 453.3335, 453.3345 or 453.3351 even if the person's conduct satisfies the requirements for imposing an additional term of imprisonment pursuant to another one or more of those sections.~~

~~3. A person who is punished pursuant to section 1 of this act must not be sentenced to an additional term of imprisonment pursuant to subsection 1 of NRS 193.161, NRS 193.162, 193.163, 193.165, 193.166, 193.167, 193.1675, 193.168, 453.3335, 453.3345 or 453.3351 even if the person's conduct satisfies the requirements for imposing an additional term of imprisonment pursuant to another one or more of those sections.~~

~~4. This section does not:~~

~~(a) Affect other penalties or limitations upon probation or suspension of a sentence contained in the sections listed in subsection 1, 2 or [2.]3.~~

~~(b) Prohibit alleging in the alternative in the indictment or information that the person's conduct satisfies the requirements of more than one of the sections listed in subsection 1, 2 or [2.]3 and introducing evidence to prove the alternative allegations. (Deleted by amendment.)~~

Sec. 3. NRS 40.140 is hereby amended to read as follows:

40.140 1. Except as otherwise provided in this section:

(a) Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;

(b) A building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog; ~~or~~

(c) A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:

(1) Which has not been deemed safe for habitation by a governmental entity; or

(2) From which all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed or remediated by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog ~~or~~; or

(d) A building or place regularly and continuously ~~used~~ by the members of a criminal gang to engage in, or facilitate the commission of, crimes by the criminal gang,

1 ↪ is a nuisance, and the subject of an action. The action may be brought by any
2 person whose property is injuriously affected, or whose personal enjoyment is
3 lessened by the nuisance, and by the judgment the nuisance may be enjoined or
4 abated, as well as damages recovered.

5 2. It is presumed:

6 (a) That an agricultural activity conducted on farmland, consistent with good
7 agricultural practice and established before surrounding nonagricultural activities is
8 reasonable. Such activity does not constitute a nuisance unless the activity has a
9 substantial adverse effect on the public health or safety.

10 (b) That an agricultural activity which does not violate a federal, state or local
11 law, ordinance or regulation constitutes good agricultural practice.

12 3. A shooting range does not constitute a nuisance with respect to any noise
13 attributable to the shooting range if the shooting range is in compliance with the
14 provisions of all applicable statutes, ordinances and regulations concerning noise:

15 (a) As those provisions existed on October 1, 1997, for a shooting range in
16 operation on or before October 1, 1997; or

17 (b) As those provisions exist on the date that the shooting range begins
18 operation, for a shooting range that begins operation after October 1, 1997.

19 ↪ A shooting range is not subject to any state or local law related to the control of
20 noise that is adopted or amended after the date set forth in paragraph (a) or (b), as
21 applicable, and does not constitute a nuisance for failure to comply with any such
22 law.

23 4. As used in this section:

24 (a) "Controlled substance analog" has the meaning ascribed to it in
25 NRS 453.043.

26 (b) *"Criminal gang" has the meaning ascribed to it in NRS 193.168.*

27 (c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

28 ~~(d)~~ (d) "Shooting range" means an area designed and used for archery or
29 sport shooting, including, but not limited to, sport shooting that involves the use of
30 rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or other similar items.

31 Sec. 4. (Deleted by amendment.)

32 Sec. 5. NRS 202.450 is hereby amended to read as follows:

33 202.450 1. A public nuisance is a crime against the order and economy of
34 the State.

35 2. Every place:

36 (a) Wherein any gambling, bookmaking or pool selling is conducted without a
37 license as provided by law, or wherein any swindling game or device, or bucket
38 shop, or any agency therefor is conducted, or any article, apparatus or device useful
39 therefor is kept;

40 (b) Wherein any fighting between animals or birds is conducted;

41 (c) Wherein any dog races are conducted as a gaming activity;

42 (d) Wherein any intoxicating liquors are kept for unlawful use, sale or
43 distribution;

44 (e) Wherein a controlled substance, immediate precursor or controlled
45 substance analog is unlawfully sold, served, stored, kept, manufactured, used or
46 given away; ~~(f)~~

47 (f) *That is regularly and continuously used by the members of a criminal*
48 *gang to engage in, or facilitate the commission of, crimes by the criminal gang;*
49 *or*

50 (g) Where vagrants resort,

51 ↪ is a public nuisance.

52 3. Every act unlawfully done and every omission to perform a duty, which act
53 or omission:

1 (a) Annoys, injures or endangers the safety, health, comfort or repose of any
2 considerable number of persons;

3 (b) Offends public decency;

4 (c) Unlawfully interferes with, befouls, obstructs or tends to obstruct, or
5 renders dangerous for passage, a lake, navigable river, bay, stream, canal, ditch,
6 millrace or basin, or a public park, square, street, alley, bridge, causeway or
7 highway; or

8 (d) In any way renders a considerable number of persons insecure in life or the
9 use of property,

10 **↪** is a public nuisance.

11 4. A building or place which was used for the purpose of unlawfully
12 manufacturing a controlled substance, immediate precursor or controlled substance
13 analog is a public nuisance if the building or place has not been deemed safe for
14 habitation by a governmental entity and:

15 (a) The owner of the building or place allows the building or place to be used
16 for any purpose before all materials or substances involving the controlled
17 substance, immediate precursor or controlled substance analog have been removed
18 from or remediated on the building or place by an entity certified or licensed to do
19 so; or

20 (b) The owner of the building or place fails to have all materials or substances
21 involving the controlled substance, immediate precursor or controlled substance
22 analog removed from or remediated on the building or place by an entity certified
23 or licensed to do so within 180 days after the building or place is no longer used for
24 the purpose of unlawfully manufacturing a controlled substance, immediate
25 precursor or controlled substance analog.

26 5. Agricultural activity conducted on farmland consistent with good
27 agricultural practice and established before surrounding nonagricultural activities is
28 not a public nuisance unless it has a substantial adverse effect on the public health
29 or safety. It is presumed that an agricultural activity which does not violate a
30 federal, state or local law, ordinance or regulation constitutes good agricultural
31 practice.

32 6. A shooting range is not a public nuisance with respect to any noise
33 attributable to the shooting range if the shooting range is in compliance with the
34 provisions of all applicable statutes, ordinances and regulations concerning noise:

35 (a) As those provisions existed on October 1, 1997, for a shooting range that
36 begins operation on or before October 1, 1997; or

37 (b) As those provisions exist on the date that the shooting range begins
38 operation, for a shooting range in operation after October 1, 1997.

39 **↪** A shooting range is not subject to any state or local law related to the control of
40 noise that is adopted or amended after the date set forth in paragraph (a) or (b), as
41 applicable, and does not constitute a nuisance for failure to comply with any such
42 law.

43 7. As used in this section:

44 (a) "Controlled substance analog" has the meaning ascribed to it in
45 NRS 453.043.

46 (b) *"Criminal gang" has the meaning ascribed to it in NRS 193.168.*

47 (c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

48 ~~(e)~~ (d) "Shooting range" has the meaning ascribed to it in NRS 40.140.

49 **Sec. 6.** Chapter 244 of NRS is hereby amended by adding thereto a new
50 section to read as follows:

51 *1. Notwithstanding the provisions of any other law or ordinance, each*
52 *board of county commissioners may, by ordinance, to protect the public health,*
53 *safety and welfare of the residents of the county, adopt procedures pursuant to*

1 *which the district attorney may file a civil action in a court of competent*
2 *jurisdiction to seek any or all of the following relief:*

3 *(a) A temporary or permanent injunction against any specific member of a*
4 *criminal gang to enjoin his activity which is associated with the criminal gang*
5 *and which is occurring within the county.*

6 *(b) The recovery of money damages, attorney's fees and costs from:*

7 *(1) Any member of a criminal gang that is engaging in criminal activities*
8 *within the county; and*

9 *(2) The owner of a building or place located within the county that has*
10 *been found to be a public nuisance because the building or place is regularly and*
11 *continuously used by the members of a criminal gang to engage in, or facilitate*
12 *the commission of, crimes by the criminal gang, but only if the owner has actual*
13 *notice that the building or place is regularly and continuously used by the*
14 *members of a criminal gang to engage in, or facilitate the commission of, crimes*
15 *by the criminal gang.*

16 *2. Any money damages awarded in an action brought pursuant to this*
17 *section must be:*

18 *(a) Paid by, or collected from:*

19 *(1) Any assets of the criminal gang or its members that were derived*
20 *from the criminal activities of the criminal gang or its members;*

21 *(2) Any assets of the owner of a building or place that has been found to*
22 *constitute a public nuisance; or*

23 *(3) Any combination of the assets described in subparagraphs (1)*
24 *and (2).*

25 *(b) Deposited into a separate, segregated fund in the county treasury, to be*
26 *used solely for the benefit of the specific community or neighborhood that has*
27 *been injured by the criminal activities of the criminal gang or the existence of the*
28 *building or place that constitutes a public nuisance.*

29 *3. A member of a criminal gang who is subject to a temporary or permanent*
30 *injunction granted pursuant to this section and who knowingly and intentionally*
31 *commits a material violation of the terms of that injunction is guilty of a*
32 *misdemeanor. If the violation also constitutes a criminal offense under another*
33 *provision of law, the violation may be prosecuted pursuant to this section or the*
34 *other provision of law, or both.*

35 *4. An action may not be brought pursuant to this section against:*

36 *(a) Any governmental entity; or*

37 *(b) Any charitable or nonprofit organization that is conducting, with*
38 *ordinary care and skill, activities relating to prevention or education concerning*
39 *criminal gangs.*

40 *5. As used in this section, "criminal gang" has the meaning ascribed to it in*
41 *NRS 193.168.*

42 **Sec. 7.** Chapter 268 of NRS is hereby amended by adding thereto a new
43 section to read as follows:

44 *1. Notwithstanding the provisions of any other law or ordinance, each*
45 *governing body of a city may, by ordinance, to protect the public health, safety*
46 *and welfare of the residents of the city, adopt procedures pursuant to which the*
47 *city attorney may file a civil action in a court of competent jurisdiction to seek*
48 *any or all of the following relief:*

49 *(a) A temporary or permanent injunction against any specific member of a*
50 *criminal gang to enjoin his activity which is associated with the criminal gang*
51 *and which is occurring within the city.*

52 *(b) The recovery of money damages, attorney's fees and costs from:*

1 (1) Any member of a criminal gang that is engaging in criminal activities
2 within the city; and

3 (2) The owner of a building or place located within the city that has been
4 found to be a public nuisance because the building or place is regularly and
5 continuously used by the members of a criminal gang to engage in, or facilitate
6 the commission of, crimes by the criminal gang, but only if the owner has actual
7 notice that the building or place is regularly and continuously used by the
8 members of a criminal gang to engage in, or facilitate the commission of, crimes
9 by the criminal gang.

10 2. Any money damages awarded in an action brought pursuant to this
11 section must be:

12 (a) Paid by, or collected from:

13 (1) Any assets of the criminal gang or its members that were derived
14 from the criminal activities of the criminal gang or its members;

15 (2) Any assets of the owner of a building or place that has been found to
16 constitute a public nuisance; or

17 (3) Any combination of the assets described in subparagraphs (1)
18 and (2).

19 (b) Deposited into a separate, segregated fund in the city treasury, to be used
20 solely for the benefit of the specific community or neighborhood that has been
21 injured by the criminal activities of the criminal gang or the existence of the
22 building or place that constitutes a public nuisance.

23 3. A member of a criminal gang who is subject to a temporary or permanent
24 injunction granted pursuant to this section and who knowingly and intentionally
25 commits a material violation of the terms of that injunction is guilty of a
26 misdemeanor. If the violation also constitutes a criminal offense under another
27 provision of law, the violation may be prosecuted pursuant to this section or the
28 other provision of law, or both.

29 4. An action may not be brought pursuant to this section against:

30 (a) Any governmental entity; or

31 (b) Any charitable or nonprofit organization that is conducting, with
32 ordinary care and skill, activities relating to prevention or education concerning
33 criminal gangs.

34 5. As used in this section, "criminal gang" has the meaning ascribed to it in
35 NRS 193.168.