

HOUSE BILL ANALYSIS

HB 1616

Title: An act relating to sentencing enhancements for criminal gang activity.

Brief Description: Providing sentencing enhancements for criminal gang activity.

Sponsors: Representatives Carrell, Mielke, Sullivan, Conway, Esser, Sump, Wood, B. Chandler, Dunn, Stensen, Gombosky, Kastama, Miloscia, Cairnes, Schindler, Reardon and Schoesler.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

Staff: Yvonne Walker (786-7841).

Background:

An adult convicted of a crime is sentenced under the provisions of the Sentencing Reform Act (SRA). The SRA specifies a standard sentence range based on the seriousness of the offense and the offender's prior criminal history score. The sentencing judge will sentence the offender to a period of confinement within that standard range. Under certain circumstances a sentencing judge may impose an exceptional sentence that falls outside the standard range.

In some circumstances, a sentencing judge is required to impose an "enhancement" on the offender's sentence. The judge must impose a sentence enhancement if the offender was armed with a firearm or a deadly weapon during the commission of the crime. The length of the enhancement for firearms and deadly weapons varies depending on the type of offense. For example, the firearm enhancement is five years for a class A felony, three years for a class B felony, and one and one-half years for a class C felony, while the deadly weapons enhancement is two years for a class A felony, one year for a class B felony, and six months for a class C felony. The judge must also impose penalty enhancements ranging from 12 months to 24 months for certain drug crimes committed in or around a school or other public place, or while the offender is confined in a jail or prison.

Juveniles who are adjudicated of an offense receive a disposition under the Juvenile Justice Act, unless the juvenile has been declined to adult court for prosecution. The juvenile code specifies a standard range disposition for a juvenile offender based on two factors: the seriousness of the current offense and prior criminal history. The judge may

impose a disposition outside the standard range if the judge finds that the standard range disposition would effectuate a manifest injustice.

The firearm enhancement imposed on a juvenile who is armed with a firearm during the commission of an offense applies to any felony offense, other than firearm-related offenses. The enhancement is six months for a class A felony, four months for a class B felony, and two months for a class C felony. The firearm enhancement must run consecutively to any other term of confinement imposed for other offenses.

Summary:

An adult or juvenile offender who is found to have committed a felony offense must receive a penalty enhancement if the offense was committed:

- for the benefit of, at the direction of, or in association with a criminal street gang; and
- with intent to promote, further, or assist in criminal conduct by gang members.

If the offender is convicted of the felony in adult court, the penalty enhancement is two years. The court may impose a penalty enhancement that is greater than or less than two years if the court finds that there are aggravating or mitigating circumstances, but the penalty enhancement may not be greater than three years or less than one year. The enhancement must run consecutively with any other sentence imposed by the court.

If the offender is adjudicated of the felony in juvenile court, the court must impose a penalty enhancement of 105 days, unless the court finds that there are aggravating or mitigating circumstances. The court may not impose a penalty enhancement greater than 120 days or less than 90 days. The enhancement must run consecutively to any other term of confinement imposed by the court.

"Criminal street gang" is defined as an ongoing organization, association, or group of three or more persons:

- having a common name or identifying sign or symbol;
- having as one of its primary activities the commission of specified offenses; and
- whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

"Pattern of criminal gang activity" is defined as the conviction or juvenile adjudication of two or more specified offenses if:

- at least one of the offenses occurred after the effective date of the act;
- the last of the offenses occurred within three years after a prior offense;
- and
- the offenses were committed on separate occasions or by two or more persons.

The specified offenses are first- or second-degree murder, robbery, burglary, kidnapping, assault, arson, or extortion; first-, second-, or third-degree theft, rape, or malicious mischief; residential burglary; money laundering; unlawful possession of a firearm; reckless endangerment; intimidating a witness; taking a motor vehicle without permission; drive-by shooting; or delivery or manufacture of a controlled substance, or possession with intent to deliver a controlled substance.

Fiscal Note: Requested on February 9, 1999.

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