

# HOUSE BILL REPORT

## HB 1522

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### As Reported By House Committee On:

Law & Justice

**Title:** An act relating to sentencing.

**Brief Description:** Providing for enhanced sentencing for criminal street gang activity.

**Sponsors:** Representatives Carrell, Sheahan, Conway, Mielke, Sherstad, Talcott, Zellinsky, Benson, Johnson, DeBolt, Mitchell, Lambert, Cooke, Clements, Kastama, Sheldon, Linville, Pennington, Honeyford, Delvin, Radcliff, Costa, Robertson, Mulliken, Smith, McMorris, Scott, Bush, Backlund, Ballasiotes, Sterk, Sump, Crouse, Wensman, Lisk, Dunn, Buck, Hickel, Reams, D. Schmidt, Mastin, Sullivan, Chandler, O'Brien, K. Schmidt, Skinner, Hankins, Dyer, Cairnes, Huff, McDonald, Alexander, Boldt, Wolfe, Keiser, Quall, Thompson and Van Luven.

### **Brief History:**

#### **Committee Activity:**

Law & Justice: 2/19/97, 3/4/97 [DPS].

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## HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

**Staff:** Edie Adams (786-7180).

**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 four factors: the seriousness of the current offense; the age of the offender; the seriousness of prior criminal history; and the recency of 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 judge must impose an enhancement of 90 days on a juvenile offender who was armed with a firearm during the commission of certain offenses. The enhancement must be added to the entire standard range disposition. The enhancement may run concurrently with other terms of confinement imposed at the same disposition, but the offender may not be released until 90 days have been served.

**Summary of Substitute Bill:** 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, reckless endangerment, arson, or extortion; first-, second-, or third-degree theft, rape, or malicious mischief; or residential burglary; money laundering; unlawful possession of a firearm; or delivery or manufacture of a controlled substance, or possession with intent to deliver a controlled substance.

**Substitute Bill Compared to Original Bill:** The original bill provides that the enhancement imposed on juvenile offenders may run concurrently with other dispositions entered at the same time.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** We need to send a clear message to children that they should not be involved in gangs and that gang activity crimes will not be tolerated. The gang problem is increasing. Gangs need to be destroyed because they control communities and cause so much damage to communities. The bill is modeled on a California law that has withstood legal challenge.

**Testimony Against:** The bill violates the First Amendment and the right to free association. The definition of "gang" is too broad and unconstitutionally vague. The bill is unnecessary because current law contains aggravating circumstances that allow exceptional sentences in appropriate cases. Efforts to deal with gang issues should be directed at the front end of the system, not the back end.

**Testified:** Representative Carrell, prime sponsor; Mike Patrick, Washington State Council of Police Officers (pro); and Sherry Appleton, Washington Defenders Association and Washington Association of Criminal Defense Lawyers (con).