
HOUSE BILL 1756

State of Washington

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By Representatives Ludwig, D. Sommers, Riley, Wynne, Forner, Orr, Van Luven, R. Johnson, Vance, Winsley, Tate, Roland, Broback, Rasmussen, Betrozoff and Nealey. Read first time February 7, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to participation in criminal street gangs; amending
2 RCW 9.94A.310; adding a new chapter to Title 9 RCW; prescribing
3 penalties; providing an effective date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter.

8 (1) "Pattern of criminal gang activity" means the commission,
9 attempted commission, or solicitation of two or more felony or
10 misdemeanor offenses, provided at least one of those offenses occurred
11 after the effective date of this act and the last of those offenses
12 occurred within one year after a prior offense, and the offenses are
13 committed on separate occasions, or by two or more persons.

14 (2) "Criminal street gang" means any ongoing organization,
15 association, or group of three or more persons, whether formal or

1 informal, that has a common name or common identifying sign or symbol
2 and that has committed one or more criminal offense.

3 NEW SECTION. **Sec. 2.** (1) It is a gross misdemeanor for any
4 person to participate actively in any criminal street gang with
5 knowledge that its members engage in or have engaged in a pattern of
6 criminal gang activity. For purposes of this chapter "actively
7 participate" means the commission of an offense punishable as a
8 misdemeanor or a felony, which is committed for the benefit of, at the
9 direction of, or in association with, any criminal street gang or with
10 the specific intent to promote, further, or assist in any criminal
11 conduct by members of that gang.

12 (2) It is a gross misdemeanor for any person willfully to promote,
13 further, assist, or profit from any criminal conduct by members of a
14 criminal street gang.

15 NEW SECTION. **Sec. 3.** (1) Any person who is convicted of a
16 felony that is committed for the benefit of, at the direction of, or in
17 association with any criminal street gang, with the specific intent to
18 promote, further, or assist in any criminal conduct by gang members,
19 shall, upon conviction of that felony, be sentenced in accordance with
20 RCW 9.94A.310(6).

21 (2) Any sentence imposed pursuant to subsection (1) of this section
22 shall be served in addition to any sentence imposed for a violation of
23 section 2 of this act.

24 NEW SECTION. **Sec. 4.** (1)(a) The following are subject to
25 seizure and forfeiture and no property right exists in them:

26 (i) All real property including every building or place used by
27 members of a criminal street gang for the purpose of the commission of

1 any criminal offense or for the purpose of storing any dangerous or
2 deadly weapons or controlled substances.

3 (ii) All personal property, including, but not limited to, any
4 item, object, tool, substance, device, weapon, machine, vehicle of any
5 kind, money, security, or negotiable instrument, which has been or is
6 actually employed as an instrumentality in the commission of, or in
7 aiding or abetting in the commission of any felony, or which was
8 furnished or is intended to be furnished by any person in the
9 commission of, as a result of, or as compensation for the commission
10 of, any felony, or which was acquired in whole or in part with proceeds
11 traceable to the commission of a felony.

12 (b)(i) No conveyance used by any person as a common carrier in the
13 transaction of business as a common carrier is subject to forfeiture
14 under this section unless it appears that the owner or other person in
15 charge of the conveyance is a consenting party or privy to the
16 commission of the crime;

17 (ii) No property is subject to forfeiture under this section if it
18 is established by the owner thereof that the crime was committed
19 without the owner's knowledge or consent;

20 (iii) A forfeiture of property encumbered by a bona fide security
21 interest is subject to the interest of the secured party if the secured
22 party neither had knowledge of nor consented to the commission of the
23 crime.

24 (2) Property subject to forfeiture under this chapter may be seized
25 by any law enforcement officer of this state upon process issued by any
26 superior court having jurisdiction over the property. Seizure of
27 personal property without process may be made if:

28 (a) The seizure is incident to an arrest or a search under a search
29 warrant;

1 (b) The property subject to seizure has been the subject of a prior
2 judgment in favor of the state in a criminal injunction or forfeiture
3 proceeding;

4 (c) A law enforcement officer has probable cause to believe that
5 the property is directly or indirectly dangerous to health or safety;
6 or

7 (d) The law enforcement officer has probable cause to believe that
8 the property was used or is intended to be used in the commission of a
9 crime.

10 (3) In the event of seizure pursuant to this section, proceedings
11 for forfeiture shall be deemed commenced by the seizure. The law
12 enforcement agency under whose authority the seizure was made shall
13 cause notice to be served within fifteen days following the seizure on
14 the owner of the property seized and the person in charge thereof and
15 any person having any known right or interest therein, including any
16 community property interest, of the seizure and intended forfeiture of
17 the seized property. The notice of seizure may be served by any method
18 authorized by law or court rule including but not limited to service by
19 certified mail with return receipt requested. Service by mail shall be
20 deemed complete upon mailing within the fifteen-day period following
21 the seizure.

22 (4) If no person notifies the seizing law enforcement agency in
23 writing of the person's claim of ownership or right to possession of
24 items specified in subsection (1) of this section within forty-five
25 days of the seizure, the item seized shall be deemed forfeited.

26 (5) If any person notifies the seizing law enforcement agency in
27 writing of the person's claim of ownership or right to possession of
28 items specified in subsection (1) of this section within forty-five
29 days of the seizure, the person or persons shall be afforded a
30 reasonable opportunity to be heard as to the claim or right. The

1 hearing shall be before the chief law enforcement officer of the
2 seizing agency or the chief law enforcement officer's designee, except
3 that any person asserting a claim or right may remove the matter to a
4 court of competent jurisdiction if the aggregate value of the article
5 or articles involved is more than five hundred dollars. The court to
6 which the matter is to be removed shall be the district court when the
7 aggregate value of the personal property is within the jurisdictional
8 limit of the district court. In a court hearing between two or more
9 claimants to the article or articles involved, the prevailing party
10 shall be entitled to a judgment for costs and reasonable attorney's
11 fees. The burden of producing evidence shall be upon the person
12 claiming to be the lawful owner or the person claiming to have the
13 lawful right to possession of the property. The seizing law
14 enforcement agency shall promptly return the article or articles to the
15 claimant upon a determination by the trier of fact that the claimant is
16 the present lawful owner or is lawfully entitled to possession.

17 (6) When property is forfeited under this chapter, the seizing law
18 enforcement agency may:

19 (a) Retain it for official use or upon application by any law
20 enforcement agency of this state release such property to such agency
21 for the exclusive use of enforcing the criminal law;

22 (b) Sell that which is not required to be destroyed by law and
23 which is not harmful to the public. The proceeds and all moneys
24 forfeited under this chapter shall be used for payment of all proper
25 expenses of the investigation leading to the seizure, including any
26 money delivered to the subject of the investigation by the law
27 enforcement agency, and of the proceedings for forfeiture and sale,
28 including expenses of seizure, maintenance of custody, advertising,
29 actual costs of the prosecuting or city attorney, and court costs.

1 Money remaining after the payment of all expenses shall be retained by
2 the seizing law enforcement agency.

3 **Sec. 5.** RCW 9.94A.310 and 1990 c 3 s 701 are each amended to read
4 as follows:

5 (1) TABLE 1

6

7

Sentencing Grid

8 SERIOUSNESS

9 SCORE

OFFENDER SCORE

10

9 or

11

0 1 2 3 4 5 6 7 8 more

12

.....

13 XV Life Sentence without Parole/Death Penalty

14

.....

15

XIV 3y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m 36y 40y

16

240- 250- 261- 271- 281- 291- 312- 338- 370- 411-

17

320 333 347 361 374 388 416 450 493 548

18

.....

19

XIII 12y 13y 14y 15y 16y 17y 19y 21y 25y 29y

20

123- 134- 144- 154- 165- 175- 195- 216- 257- 298-

21

164 178 192 205 219 233 260 288 342 397

22

.....

1	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
2		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
3		123	136	147	160	171	184	216	236	277	318
4	.....									
5	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
6		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
7		102	114	125	136	147	158	194	211	245	280
8	.....									
9	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
10		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
11		68	75	82	89	96	102	130	144	171	198
12	.....									
13	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
14		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
15		41	48	54	61	68	75	102	116	144	171
16	.....									
17	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
18		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
19		27	34	41	48	54	61	89	102	116	144
20	.....									
21	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
22		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
23		20	27	34	41	48	54	75	89	102	116
24	.....									
25	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
26		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
27		14	20	27	34	41	48	61	75	89	102
28	.....									

1	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
2		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
3		12	14	17	20	29	43	54	68	82	96
4	.....									
5	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
6		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
7		9	12	14	17	20	29	43	57	70	84
8	.....									
9	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
10		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
11		3	8	12	12	16	22	29	43	57	68
12	.....									
13	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
14		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
15		Days	6	9	12	14	18	22	29	43	57
16	.....									
17	I		3m	4m	5m	8m	13m	16m	20m	2y2m	
18		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
19		Days	Days	5	6	8	12	14	18	22	29
20	.....									

21 NOTE: Numbers in the first horizontal row of each seriousness category
22 represent sentencing midpoints in years(y) and months(m). Numbers in
23 the second and third rows represent presumptive sentencing ranges in
24 months, or in days if so designated. 12+ equals one year and one day.

25 (2) For persons convicted of the anticipatory offenses of criminal
26 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
27 presumptive sentence is determined by locating the sentencing grid
28 sentence range defined by the appropriate offender score and the

1 seriousness level of the completed crime, and multiplying the range by
2 75 percent.

3 (3) The following additional times shall be added to the
4 presumptive sentence if the offender or an accomplice was armed with a
5 deadly weapon as defined in this chapter and the offender is being
6 sentenced for one of the crimes listed in this subsection. If the
7 offender or an accomplice was armed with a deadly weapon and the
8 offender is being sentenced for an anticipatory offense under chapter
9 9A.28 RCW to commit one of the crimes listed in this subsection, the
10 following times shall be added to the presumptive range determined
11 under subsection (2) of this section:

12 (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW
13 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

14 (b) 18 months for Burglary 1 (RCW 9A.52.020)

15 (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Escape 1
16 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building
17 other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW
18 9A.56.080), or any drug offense.

19 (4) The following additional times shall be added to the
20 presumptive sentence if the offender or an accomplice committed the
21 offense while in a county jail or state correctional facility as that
22 term is defined in this chapter and the offender is being sentenced for
23 one of the crimes listed in this subsection. If the offender or an
24 accomplice committed one of the crimes listed in this subsection while
25 in a county jail or state correctional facility as that term is defined
26 in this chapter, and the offender is being sentenced for an
27 anticipatory offense under chapter 9A.28 RCW to commit one of the
28 crimes listed in this subsection, the following times shall be added to
29 the presumptive sentence range determined under subsection (2) of this
30 section:

1 (a) Eighteen months for offenses committed under RCW
2 69.50.401(a)(1)(i);

3 (b) Fifteen months for offenses committed under RCW
4 69.50.401(a)(1)(ii), (iii), and (iv);

5 (c) Twelve months for offenses committed under RCW 69.50.401(d).

6 For the purposes of this subsection, all of the real property of a
7 state correctional facility or county jail shall be deemed to be part
8 of that facility or county jail.

9 (5) An additional twenty-four months shall be added to the
10 presumptive sentence for any ranked offense involving a violation of
11 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

12 (6) An additional thirty-six months shall be added to the
13 presumptive sentence for any ranked offense if the offender is found to
14 have committed the offense in connection with criminal street gang
15 activity as provided for in section 3 of this act.

16 NEW SECTION. Sec. 6. Sections 1 through 4 of this act shall
17 constitute a new chapter in Title 9 RCW.

18 NEW SECTION. Sec. 7. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. Sec. 8. This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and shall take
25 effect July 1, 1991.