
SUBSTITUTE HOUSE BILL 2344

State of Washington

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By House Committee on Judiciary (originally sponsored by Representatives Ludwig, Vance, Riley, Paris, Neher, Broback, Mielke, Scott, Tate, H. Myers, Rayburn, Roland, Orr, Lisk, Zellinsky, Dellwo, Dorn, Jacobsen, Winsley, Van Luven, Nealey, Forner, G. Fisher, Kremen, Heavey, Chandler, Fuhrman, Bray, Mitchell, Bowman, Horn, Carlson, Sprenkle and Hochstatter)

Read first time 02/07/92.

1 AN ACT Relating to participation in criminal street gangs; amending
2 RCW 9.94A.390; reenacting and amending RCW 9.94A.030; prescribing
3 penalties; and providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.030 and 1991 c 348 s 4, 1991 c 290 s 3, and 1991
6 c 181 s 1 are each reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Collect," or any derivative thereof, "collect and remit," or
10 "collect and deliver," when used with reference to the department of
11 corrections, means that the department is responsible for monitoring
12 and enforcing the offender's sentence with regard to the legal
13 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

3 (2) "Commission" means the sentencing guidelines commission.

4 (3) "Community corrections officer" means an employee of the
5 department who is responsible for carrying out specific duties in
6 supervision of sentenced offenders and monitoring of sentence
7 conditions.

8 (4) "Community custody" means that portion of an inmate's sentence
9 of confinement in lieu of earned early release time served in the
10 community subject to controls placed on the inmate's movement and
11 activities by the department of corrections.

12 (5) "Community placement" means that period during which the
13 offender is subject to the conditions of community custody and/or
14 postrelease supervision, which begins either upon completion of the
15 term of confinement (postrelease supervision) or at such time as the
16 offender is transferred to community custody in lieu of earned early
17 release. Community placement may consist of entirely community
18 custody, entirely postrelease supervision, or a combination of the two.

19 (6) "Community service" means compulsory service, without
20 compensation, performed for the benefit of the community by the
21 offender.

22 (7) "Community supervision" means a period of time during which a
23 convicted offender is subject to crime-related prohibitions and other
24 sentence conditions imposed by a court pursuant to this chapter or RCW
25 46.61.524. For first-time offenders, the supervision may include
26 crime-related prohibitions and other conditions imposed pursuant to RCW
27 9.94A.120(5). For purposes of the interstate compact for out-of-state
28 supervision of parolees and probationers, RCW 9.95.270, community
29 supervision is the functional equivalent of probation and should be
30 considered the same as probation by other states.

1 (8) "Confinement" means total or partial confinement as defined in
2 this section.

3 (9) "Conviction" means an adjudication of guilt pursuant to Titles
4 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
5 acceptance of a plea of guilty.

6 (10) "Court-ordered legal financial obligation" means a sum of
7 money that is ordered by a superior court of the state of Washington
8 for legal financial obligations which may include restitution to the
9 victim, statutorily imposed crime victims' compensation fees as
10 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
11 drug funds, court-appointed attorneys' fees, and costs of defense,
12 fines, and any other financial obligation that is assessed to the
13 offender as a result of a felony conviction.

14 (11) "Crime-related prohibition" means an order of a court
15 prohibiting conduct that directly relates to the circumstances of the
16 crime for which the offender has been convicted, and shall not be
17 construed to mean orders directing an offender affirmatively to
18 participate in rehabilitative programs or to otherwise perform
19 affirmative conduct.

20 (12)(a) "Criminal history" means the list of a defendant's prior
21 convictions, whether in this state, in federal court, or elsewhere.
22 The history shall include, where known, for each conviction (i) whether
23 the defendant has been placed on probation and the length and terms
24 thereof; and (ii) whether the defendant has been incarcerated and the
25 length of incarceration.

26 (b) "Criminal history" shall always include juvenile convictions
27 for sex offenses and shall also include a defendant's other prior
28 convictions in juvenile court if: (i) The conviction was for an
29 offense which is a felony or a serious traffic offense and is criminal
30 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was

1 fifteen years of age or older at the time the offense was committed;
2 and (iii) with respect to prior juvenile class B and C felonies or
3 serious traffic offenses, the defendant was less than twenty-three
4 years of age at the time the offense for which he or she is being
5 sentenced was committed.

6 (13) "Criminal street gang" means any ongoing organization,
7 association, or group of three or more persons, whether formal or
8 informal, that has as one of its primary activities the commission of
9 a criminal act or acts, that has a common name and whose members
10 individually or collectively engage in or have engaged in a pattern of
11 criminal gang activity.

12 (14) "Department" means the department of corrections.

13 (~~(14)~~) (15) "Determinate sentence" means a sentence that states
14 with exactitude the number of actual years, months, or days of total
15 confinement, of partial confinement, of community supervision, the
16 number of actual hours or days of community service work, or dollars or
17 terms of a legal financial obligation. The fact that an offender
18 through "earned early release" can reduce the actual period of
19 confinement shall not affect the classification of the sentence as a
20 determinate sentence.

21 (~~(15)~~) (16) "Disposable earnings" means that part of the earnings
22 of an individual remaining after the deduction from those earnings of
23 any amount required by law to be withheld. For the purposes of this
24 definition, "earnings" means compensation paid or payable for personal
25 services, whether denominated as wages, salary, commission, bonuses, or
26 otherwise, and, notwithstanding any other provision of law making the
27 payments exempt from garnishment, attachment, or other process to
28 satisfy a court-ordered legal financial obligation, specifically
29 includes periodic payments pursuant to pension or retirement programs,
30 or insurance policies of any type, but does not include payments made

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
2 or Title 74 RCW.

3 ~~((16))~~ (17) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of
5 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
6 controlled substance (RCW 69.50.403);

7 (b) Any offense defined as a felony under federal law that relates
8 to the possession, manufacture, distribution, or transportation of a
9 controlled substance; or

10 (c) Any out-of-state conviction for an offense that under the laws
11 of this state would be a felony classified as a drug offense under (a)
12 of this subsection.

13 ~~((17))~~ (18) "Escape" means:

14 (a) Escape in the first degree (RCW 9A.76.110), escape in the
15 second degree (RCW 9A.76.120), willful failure to return from furlough
16 (RCW 72.66.060), willful failure to return from work release (RCW
17 72.65.070), or willful failure to comply with any limitations on the
18 inmate's movements while in community custody (RCW 72.09.310); or

19 (b) Any federal or out-of-state conviction for an offense that
20 under the laws of this state would be a felony classified as an escape
21 under (a) of this subsection.

22 ~~((18))~~ (19) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
24 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
25 and-run injury-accident (RCW 46.52.020(4)); or

26 (b) Any federal or out-of-state conviction for an offense that
27 under the laws of this state would be a felony classified as a felony
28 traffic offense under (a) of this subsection.

29 ~~((19))~~ (20) "Fines" means the requirement that the offender pay
30 a specific sum of money over a specific period of time to the court.

1 (~~(20)~~) (21)(a) "First-time offender" means any person who is
2 convicted of a felony (i) not classified as a violent offense or a sex
3 offense under this chapter, or (ii) that is not the manufacture,
4 delivery, or possession with intent to manufacture or deliver a
5 controlled substance classified in schedule I or II that is a narcotic
6 drug or the selling for profit (~~{of}~~) of any controlled substance or
7 counterfeit substance classified in schedule I, RCW 69.50.204, except
8 leaves and flowering tops of marihuana, and except as provided in (b)
9 of this subsection, who previously has never been convicted of a felony
10 in this state, federal court, or another state, and who has never
11 participated in a program of deferred prosecution for a felony offense.

12 (b) For purposes of (a) of this subsection, a juvenile adjudication
13 for an offense committed before the age of fifteen years is not a
14 previous felony conviction except for adjudications of sex offenses.

15 (~~(21)~~) (22) "Nonviolent offense" means an offense which is not a
16 violent offense.

17 (~~(22)~~) (23) "Offender" means a person who has committed a felony
18 established by state law and is eighteen years of age or older or is
19 less than eighteen years of age but whose case has been transferred by
20 the appropriate juvenile court to a criminal court pursuant to RCW
21 13.40.110. Throughout this chapter, the terms "offender" and
22 "defendant" are used interchangeably.

23 (~~(23)~~) (24) "Partial confinement" means confinement for no more
24 than one year in a facility or institution operated or utilized under
25 contract by the state or any other unit of government, or, if home
26 detention or work crew has been ordered by the court, in an approved
27 residence, for a substantial portion of each day with the balance of
28 the day spent in the community. Partial confinement includes work
29 release, home detention, work crew, and a combination of work crew and
30 home detention as defined in this section.

1 (~~(24)~~) (25) "Pattern of criminal gang activity" means the
2 commission, attempted commission, or solicitation of two or more felony
3 or misdemeanor offenses under the following conditions: (a) At least
4 one of the offenses occurred after the effective date of this act; (b)
5 the last of the offenses occurred within one year after a prior
6 offense; and (c) the offenses are committed on separate occasions, or
7 by two or more persons.

8 (26) "Postrelease supervision" is that portion of an offender's
9 community placement that is not community custody.

10 (~~(25)~~) (27) "Restitution" means the requirement that the offender
11 pay a specific sum of money over a specific period of time to the court
12 as payment of damages. The sum may include both public and private
13 costs. The imposition of a restitution order does not preclude civil
14 redress.

15 (~~(26)~~) (28) "Serious traffic offense" means:

16 (a) Driving while under the influence of intoxicating liquor or any
17 drug (RCW 46.61.502), actual physical control while under the influence
18 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
19 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
20 or

21 (b) Any federal, out-of-state, county, or municipal conviction for
22 an offense that under the laws of this state would be classified as a
23 serious traffic offense under (a) of this subsection.

24 (~~(27)~~) (29) "Serious violent offense" is a subcategory of violent
25 offense and means:

26 (a) Murder in the first degree, homicide by abuse, murder in the
27 second degree, assault in the first degree, kidnapping in the first
28 degree, or rape in the first degree, or an attempt, criminal
29 solicitation, or criminal conspiracy to commit one of these felonies;
30 or

1 (b) Any federal or out-of-state conviction for an offense that
2 under the laws of this state would be a felony classified as a serious
3 violent offense under (a) of this subsection.

4 (~~(28)~~) (30) "Sentence range" means the sentencing court's
5 discretionary range in imposing a nonappealable sentence.

6 (~~(29)~~) (31) "Sex offense" means:

7 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
8 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
9 attempt, criminal solicitation, or criminal conspiracy to commit such
10 crimes;

11 (b) A felony with a finding of sexual motivation under RCW
12 9.94A.127; or

13 (c) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as a sex
15 offense under (a) of this subsection.

16 (~~(30)~~) (32) "Sexual motivation" means that one of the purposes
17 for which the defendant committed the crime was for the purpose of his
18 or her sexual gratification.

19 (~~(31)~~) (33) "Total confinement" means confinement inside the
20 physical boundaries of a facility or institution operated or utilized
21 under contract by the state or any other unit of government for twenty-
22 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

23 (~~(32)~~) (34) "Victim" means any person who has sustained
24 emotional, psychological, physical, or financial injury to person or
25 property as a direct result of the crime charged.

26 (~~(33)~~) (35) "Violent offense" means:

27 (a) Any of the following felonies, as now existing or hereafter
28 amended: Any felony defined under any law as a class A felony or an
29 attempt to commit a class A felony, criminal solicitation of or
30 criminal conspiracy to commit a class A felony, manslaughter in the

1 first degree, manslaughter in the second degree, indecent liberties if
2 committed by forcible compulsion, kidnapping in the second degree,
3 arson in the second degree, assault in the second degree, extortion in
4 the first degree, robbery in the second degree, vehicular assault, and
5 vehicular homicide, when proximately caused by the driving of any
6 vehicle by any person while under the influence of intoxicating liquor
7 or any drug as defined by RCW 46.61.502, or by the operation of any
8 vehicle in a reckless manner;

9 (b) Any conviction for a felony offense in effect at any time prior
10 to July 1, 1976, that is comparable to a felony classified as a violent
11 offense in (a) of this subsection; and

12 (c) Any federal or out-of-state conviction for an offense that
13 under the laws of this state would be a felony classified as a violent
14 offense under (a) or (b) of this subsection.

15 (~~((34))~~) (36) "Work crew" means a program of partial confinement
16 consisting of civic improvement tasks for the benefit of the community
17 of not less than thirty-five hours per week that complies with RCW
18 9.94A.135. The civic improvement tasks shall be performed on public
19 property or on private property owned or operated by nonprofit
20 entities, except that, for emergency purposes only, work crews may
21 perform snow removal on any private property. The civic improvement
22 tasks shall have minimal negative impact on existing private industries
23 or the labor force in the county where the service or labor is
24 performed. The civic improvement tasks shall not affect employment
25 opportunities for people with developmental disabilities contracted
26 through sheltered workshops as defined in RCW 82.04.385. Only those
27 offenders sentenced to a facility operated or utilized under contract
28 by a county are eligible to participate on a work crew. Offenders
29 sentenced for a sex offense as defined in subsection (~~((29))~~) (31) of
30 this section are not eligible for the work crew program.

1 (~~(35)~~) (37) "Work release" means a program of partial confinement
2 available to offenders who are employed or engaged as a student in a
3 regular course of study at school. Participation in work release shall
4 be conditioned upon the offender attending work or school at regularly
5 defined hours and abiding by the rules of the work release facility.

6 (~~(36)~~) (38) "Home detention" means a program of partial
7 confinement available to offenders wherein the offender is confined in
8 a private residence subject to electronic surveillance. Home detention
9 may not be imposed for offenders convicted of a violent offense, any
10 sex offense, any drug offense, reckless burning in the first or second
11 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
12 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in
13 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home
14 detention may be imposed for offenders convicted of possession of a
15 controlled substance (RCW 69.50.401(d)) or forged prescription for a
16 controlled substance (RCW 69.50.403) if the offender fulfills the
17 participation conditions set forth in this subsection and is monitored
18 for drug use by treatment alternatives to street crime (TASC) or a
19 comparable court or agency-referred program.

20 (a) Home detention may be imposed for offenders convicted of
21 burglary in the second degree as defined in RCW 9A.52.030 or
22 residential burglary conditioned upon the offender: (i) Successfully
23 completing twenty-one days in a work release program, (ii) having no
24 convictions for burglary in the second degree or residential burglary
25 during the preceding two years and not more than two prior convictions
26 for burglary or residential burglary, (iii) having no convictions for
27 a violent felony offense during the preceding two years and not more
28 than two prior convictions for a violent felony offense, (iv) having no
29 prior charges of escape, and (v) fulfilling the other conditions of the
30 home detention program.

1 (b) Participation in a home detention program shall be conditioned
2 upon: (i) The offender obtaining or maintaining current employment or
3 attending a regular course of school study at regularly defined hours,
4 or the offender performing parental duties to offspring or minors
5 normally in the custody of the offender, (ii) abiding by the rules of
6 the home detention program, and (iii) compliance with court-ordered
7 legal financial obligations. The home detention program may also be
8 made available to offenders whose charges and convictions do not
9 otherwise disqualify them if medical or health-related conditions,
10 concerns or treatment would be better addressed under the home
11 detention program, or where the health and welfare of the offender,
12 other inmates, or staff would be jeopardized by the offender's
13 incarceration. Participation in the home detention program for medical
14 or health-related reasons is conditioned on the offender abiding by the
15 rules of the home detention program and complying with court-ordered
16 restitution.

17 **Sec. 2.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
18 as follows:

19 If the sentencing court finds that an exceptional sentence outside
20 the standard range should be imposed in accordance with RCW
21 9.94A.120(2), the sentence is subject to review only as provided for in
22 RCW 9.94A.210(4).

23 The following are illustrative factors which the court may consider
24 in the exercise of its discretion to impose an exceptional sentence.
25 The following are illustrative only and are not intended to be
26 exclusive reasons for exceptional sentences.

27 (1) Mitigating Circumstances

28 (a) To a significant degree, the victim was an initiator, willing
29 participant, aggressor, or provoker of the incident.

1 (b) Before detection, the defendant compensated, or made a good
2 faith effort to compensate, the victim of the criminal conduct for any
3 damage or injury sustained.

4 (c) The defendant committed the crime under duress, coercion,
5 threat, or compulsion insufficient to constitute a complete defense but
6 which significantly affected his or her conduct.

7 (d) The defendant, with no apparent predisposition to do so, was
8 induced by others to participate in the crime.

9 (e) The defendant's capacity to appreciate the wrongfulness of his
10 conduct or to conform his conduct to the requirements of the law, was
11 significantly impaired (voluntary use of drugs or alcohol is excluded).

12 (f) The offense was principally accomplished by another person and
13 the defendant manifested extreme caution or sincere concern for the
14 safety or well-being of the victim.

15 (g) The operation of the multiple offense policy of RCW 9.94A.400
16 results in a presumptive sentence that is clearly excessive in light of
17 the purpose of this chapter, as expressed in RCW 9.94A.010.

18 (h) The defendant or the defendant's children suffered a continuing
19 pattern of physical or sexual abuse by the victim of the offense and
20 the offense is a response to that abuse.

21 (2) Aggravating Circumstances

22 (a) The defendant's conduct during the commission of the current
23 offense manifested deliberate cruelty to the victim.

24 (b) The defendant knew or should have known that the victim of the
25 current offense was particularly vulnerable or incapable of resistance
26 due to extreme youth, advanced age, disability, or ill health.

27 (c) The current offense was a major economic offense or series of
28 offenses, so identified by a consideration of any of the following
29 factors:

1 (i) The current offense involved multiple victims or multiple
2 incidents per victim;

3 (ii) The current offense involved attempted or actual monetary loss
4 substantially greater than typical for the offense;

5 (iii) The current offense involved a high degree of sophistication
6 or planning or occurred over a lengthy period of time;

7 (iv) The defendant used his or her position of trust, confidence,
8 or fiduciary responsibility to facilitate the commission of the current
9 offense.

10 (d) The current offense was a major violation of the Uniform
11 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
12 trafficking in controlled substances, which was more onerous than the
13 typical offense of its statutory definition: The presence of ANY of
14 the following may identify a current offense as a major VUCSA:

15 (i) The current offense involved at least three separate
16 transactions in which controlled substances were sold, transferred, or
17 possessed with intent to do so; or

18 (ii) The current offense involved an attempted or actual sale or
19 transfer of controlled substances in quantities substantially larger
20 than for personal use; or

21 (iii) The current offense involved the manufacture of controlled
22 substances for use by other parties; or

23 (iv) The circumstances of the current offense reveal the offender
24 to have occupied a high position in the drug distribution hierarchy; or

25 (v) The current offense involved a high degree of sophistication or
26 planning or occurred over a lengthy period of time or involved a broad
27 geographic area of disbursement; or

28 (vi) The offender used his or her position or status to facilitate
29 the commission of the current offense, including positions of trust,

1 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
2 other medical professional)((~~or~~)).

3 (e) The current offense included a finding of sexual motivation
4 pursuant to RCW 9.94A.127(~~(or)~~).

5 (f) The offense was part of an ongoing pattern of sexual abuse of
6 the same victim under the age of eighteen years manifested by multiple
7 incidents over a prolonged period of time(~~(or)~~).

8 (g) The operation of the multiple offense policy of RCW 9.94A.400
9 results in a presumptive sentence that is clearly too lenient in light
10 of the purpose of this chapter, as expressed in RCW 9.94A.010.

11 (h) The offense was committed for the benefit of, at the direction
12 of, or in association with any criminal street gang as defined in RCW
13 9.94A.030, with the specific intent to promote, further, or assist in
14 any criminal conduct by gang members.

15 NEW SECTION. Sec. 3. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. Sec. 4. This act shall take effect July 1, 1992.