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HOUSE BILL 2344

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State of Washington

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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 01/15/92. Referred to Committee on Judiciary.

1 AN ACT Relating to participation in criminal street gangs; amending  
2 RCW 9.94A.390; adding a new section to chapter 9.91 RCW; prescribing  
3 penalties; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.91 RCW  
6 to read as follows:

7 (1)(a) It is a gross misdemeanor for any person to be a member of  
8 or participate actively in any criminal street gang with knowledge that  
9 its members engage in or have engaged in a pattern of criminal gang  
10 activity and with the specific intent to promote, further, or assist in  
11 any criminal conduct by members of that gang.

12 (b) 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.

1 (2) For the purposes of this section, the following definitions  
2 apply.

3 (a) "Participate actively" means the commission of an offense  
4 punishable as a misdemeanor or a felony, which is committed for the  
5 benefit of, at the direction of, or in association with, any criminal  
6 street gang.

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

13 The following factors may be considered in determining the  
14 existence of a criminal street gang:

15 (i) Displaying gang colors;

16 (ii) Using gang hand signs;

17 (iii) Displaying common identifying signs or symbols;

18 (iv) The presence of tattoos;

19 (v) Wearing common gang clothing;

20 (vi) A companion, accomplice, or coconspirator is a gang member, or  
21 has been convicted of a violation of this section.

22 (c) "Pattern of criminal gang activity" means the commission,  
23 attempted commission, or solicitation of two or more felony or  
24 misdemeanor offenses under the following conditions: (i) At least one  
25 of the offenses occurred after the effective date of this act; (ii) the  
26 last of the offenses occurred within one year after a prior offense;  
27 and (iii) the offenses are committed on separate occasions, or by two  
28 or more persons.

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

3       If the sentencing court finds that an exceptional sentence outside  
4 the standard range should be imposed in accordance with RCW  
5 9.94A.120(2), the sentence is subject to review only as provided for in  
6 RCW 9.94A.210(4).

7       The following are illustrative factors which the court may consider  
8 in the exercise of its discretion to impose an exceptional sentence.  
9 The following are illustrative only and are not intended to be  
10 exclusive reasons for exceptional sentences.

11       (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

4 (2) Aggravating Circumstances

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

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

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

13 (i) The current offense involved multiple victims or multiple  
14 incidents per victim;

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

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

19 (iv) The defendant used his or her position of trust, confidence,  
20 or fiduciary responsibility to facilitate the commission of the current  
21 offense.

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

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

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

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

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

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

11 (vi) The offender used his or her position or status to facilitate  
12 the commission of the current offense, including positions of trust,  
13 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
14 other medical professional)~~((;or))~~.

15 (e) The current offense included a finding of sexual motivation  
16 pursuant to RCW 9.94A.127~~((;))~~.

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

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

23 (h) The offense was committed for the benefit of, at the direction  
24 of, or in association with any criminal street gang as defined in  
25 section 1 of this act, with the specific intent to promote, further, or  
26 assist in any criminal conduct by gang members.

27 NEW SECTION. Sec. 3. If any provision of this act or its  
28 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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