
HOUSE BILL 1516

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By Representatives Ludwig, Mastin, Lisk, Bray, Kremen, Dorn, Flemming, Basich, Morris, Kessler, Schmidt, Vance, Mielke, Ballasiotes, Johanson, Finkbeiner, Chandler, Hansen, Orr, Grant, Lemmon, Romero, Chappell, Forner, Tate, Campbell, Van Luven, Edmondson, G. Fisher, Sehlin, Holm, Brough, Casada, Scott, R. Meyers, Fuhrman, Miller, Karahalios, Foreman, Brumsickle, Wood, Silver, Horn, Cothorn, Long, Valle and Talcott

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1 AN ACT Relating to sentencing for crimes committed by gang members;
2 amending RCW 9.94A.390; reenacting and amending RCW 9.94A.030;
3 prescribing penalties; providing an effective date; and declaring an
4 emergency.

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

6 **Sec. 1.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are
7 each reenacted and amended to read as follows:

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

10 (1) "Collect," or any derivative thereof, "collect and remit," or
11 "collect and deliver," when used with reference to the department of
12 corrections, means that the department is responsible for monitoring
13 and enforcing the offender's sentence with regard to the legal
14 financial obligation, receiving payment thereof from the offender, and,
15 consistent with current law, delivering daily the entire payment to the
16 superior court clerk without depositing it in a departmental account.

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

18 (3) "Community corrections officer" means an employee of the
19 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

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

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

14 (6) "Community service" means compulsory service, without compensa-
15 tion, performed for the benefit of the community by the offender.

16 (7) "Community supervision" means a period of time during which a
17 convicted offender is subject to crime-related prohibitions and other
18 sentence conditions imposed by a court pursuant to this chapter or RCW
19 46.61.524. For first-time offenders, the supervision may include
20 crime-related prohibitions and other conditions imposed pursuant to RCW
21 9.94A.120(5). For purposes of the interstate compact for out-of-state
22 supervision of parolees and probationers, RCW 9.95.270, community
23 supervision is the functional equivalent of probation and should be
24 considered the same as probation by other states.

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

27 (9) "Conviction" means an adjudication of guilt pursuant to Titles
28 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
29 acceptance of a plea of guilty.

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

38 (11) "Crime-related prohibition" means an order of a court
39 prohibiting conduct that directly relates to the circumstances of the

1 crime for which the offender has been convicted, and shall not be
2 construed to mean orders directing an offender affirmatively to
3 participate in rehabilitative programs or to otherwise perform
4 affirmative conduct.

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

11 (b) "Criminal history" shall always include juvenile convictions
12 for sex offenses and shall also include a defendant's other prior
13 convictions in juvenile court if: (i) The conviction was for an
14 offense which is a felony or a serious traffic offense and is criminal
15 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was
16 fifteen years of age or older at the time the offense was committed;
17 and (iii) with respect to prior juvenile class B and C felonies or
18 serious traffic offenses, the defendant was less than twenty-three
19 years of age at the time the offense for which he or she is being
20 sentenced was committed.

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

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

28 (~~(14)~~) (15) "Determinate sentence" means a sentence that states
29 with exactitude the number of actual years, months, or days of total
30 confinement, of partial confinement, of community supervision, the
31 number of actual hours or days of community service work, or dollars or
32 terms of a legal financial obligation. The fact that an offender
33 through "earned early release" can reduce the actual period of
34 confinement shall not affect the classification of the sentence as a
35 determinate sentence.

36 (~~(15)~~) (16) "Disposable earnings" means that part of the earnings
37 of an individual remaining after the deduction from those earnings of
38 any amount required by law to be withheld. For the purposes of this
39 definition, "earnings" means compensation paid or payable for personal

1 services, whether denominated as wages, salary, commission, bonuses, or
2 otherwise, and, notwithstanding any other provision of law making the
3 payments exempt from garnishment, attachment, or other process to
4 satisfy a court-ordered legal financial obligation, specifically
5 includes periodic payments pursuant to pension or retirement programs,
6 or insurance policies of any type, but does not include payments made
7 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
8 or Title 74 RCW.

9 ~~((16))~~ (17) "Drug offense" means:

10 (a) Any felony violation of chapter 69.50 RCW except possession of
11 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
12 controlled substance (RCW 69.50.403);

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

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

19 ~~((17))~~ (18) "Escape" means:

20 (a) Escape in the first degree (RCW 9A.76.110), escape in the
21 second degree (RCW 9A.76.120), willful failure to return from furlough
22 (RCW 72.66.060), willful failure to return from work release (RCW
23 72.65.070), or willful failure to be available for supervision by the
24 department while in community custody (RCW 72.09.310); or

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

28 ~~((18))~~ (19) "Felony traffic offense" means:

29 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
30 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
31 and-run injury-accident (RCW 46.52.020(4)); or

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

35 ~~((19))~~ (20) "Fines" means the requirement that the offender pay
36 a specific sum of money over a specific period of time to the court.

37 ~~((20))~~ (21)(a) "First-time offender" means any person who is
38 convicted of a felony (i) not classified as a violent offense or a sex
39 offense under this chapter, or (ii) that is not the manufacture,

1 delivery, or possession with intent to manufacture or deliver a
2 controlled substance classified in schedule I or II that is a narcotic
3 drug or the selling for profit (~~{ef}~~) of any controlled substance or
4 counterfeit substance classified in schedule I, RCW 69.50.204, except
5 leaves and flowering tops of marihuana, and except as provided in (b)
6 of this subsection, who previously has never been convicted of a felony
7 in this state, federal court, or another state, and who has never
8 participated in a program of deferred prosecution for a felony offense.

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

12 (~~{21}~~) (22) "Nonviolent offense" means an offense which is not a
13 violent offense.

14 (~~{22}~~) (23) "Offender" means a person who has committed a felony
15 established by state law and is eighteen years of age or older or is
16 less than eighteen years of age but whose case has been transferred by
17 the appropriate juvenile court to a criminal court pursuant to RCW
18 13.40.110. Throughout this chapter, the terms "offender" and
19 "defendant" are used interchangeably.

20 (~~{23}~~) (24) "Partial confinement" means confinement for no more
21 than one year in a facility or institution operated or utilized under
22 contract by the state or any other unit of government, or, if home
23 detention or work crew has been ordered by the court, in an approved
24 residence, for a substantial portion of each day with the balance of
25 the day spent in the community. Partial confinement includes work
26 release, home detention, work crew, and a combination of work crew and
27 home detention as defined in this section.

28 (~~{24}~~) (25) "Pattern of criminal gang activity" means the
29 commission, attempted commission, or solicitation of two or more felony
30 or misdemeanor offenses under the following conditions: (a) At least
31 one of the offenses occurred after the effective date of this act; (b)
32 the last of the offenses occurred within one year after a prior
33 offense; and (c) the offenses are committed on separate occasions, or
34 by two or more persons.

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

37 (~~{25}~~) (27) "Restitution" means the requirement that the offender
38 pay a specific sum of money over a specific period of time to the court
39 as payment of damages. The sum may include both public and private

1 costs. The imposition of a restitution order does not preclude civil
2 redress.

3 ~~((+26+))~~ (28) "Serious traffic offense" means:

4 (a) Driving while under the influence of intoxicating liquor or any
5 drug (RCW 46.61.502), actual physical control while under the influence
6 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
7 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
8 or

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

12 ~~((+27+))~~ (29) "Serious violent offense" is a subcategory of violent
13 offense and means:

14 (a) Murder in the first degree, homicide by abuse, murder in the
15 second degree, assault in the first degree, kidnapping in the first
16 degree, or rape in the first degree, assault of a child in the first
17 degree, or an attempt, criminal solicitation, or criminal conspiracy to
18 commit one of these felonies; 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 a serious
21 violent offense under (a) of this subsection.

22 ~~((+28+))~~ (30) "Sentence range" means the sentencing court's
23 discretionary range in imposing a nonappealable sentence.

24 ~~((+29+))~~ (31) "Sex offense" means:

25 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
26 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
27 attempt, criminal solicitation, or criminal conspiracy to commit such
28 crimes;

29 (b) A felony with a finding of sexual motivation under RCW
30 9.94A.127; or

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

34 ~~((+30+))~~ (32) "Sexual motivation" means that one of the purposes
35 for which the defendant committed the crime was for the purpose of his
36 or her sexual gratification.

37 ~~((+31+))~~ (33) "Total confinement" means confinement inside the
38 physical boundaries of a facility or institution operated or utilized

1 under contract by the state or any other unit of government for twenty-
2 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

3 ~~((+32+))~~ (34) "Victim" means any person who has sustained
4 emotional, psychological, physical, or financial injury to person or
5 property as a direct result of the crime charged.

6 ~~((+33+))~~ (35) "Violent offense" means:

7 (a) Any of the following felonies, as now existing or hereafter
8 amended: Any felony defined under any law as a class A felony or an
9 attempt to commit a class A felony, criminal solicitation of or
10 criminal conspiracy to commit a class A felony, manslaughter in the
11 first degree, manslaughter in the second degree, indecent liberties if
12 committed by forcible compulsion, kidnapping in the second degree,
13 arson in the second degree, assault in the second degree, assault of a
14 child in the second degree, extortion in the first degree, robbery in
15 the second degree, vehicular assault, and vehicular homicide, when
16 proximately caused by the driving of any vehicle by any person while
17 under the influence of intoxicating liquor or any drug as defined by
18 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

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

1 sentenced for a sex offense as defined in subsection (~~((29))~~) (31) of
2 this section are not eligible for the work crew program.

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

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

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

34 (b) Participation in a home detention program shall be conditioned
35 upon: (i) The offender obtaining or maintaining current employment or
36 attending a regular course of school study at regularly defined hours,
37 or the offender performing parental duties to offspring or minors
38 normally in the custody of the offender, (ii) abiding by the rules of
39 the home detention program, and (iii) compliance with court-ordered

1 legal financial obligations. The home detention program may also be
2 made available to offenders whose charges and convictions do not
3 otherwise disqualify them if medical or health-related conditions,
4 concerns or treatment would be better addressed under the home
5 detention program, or where the health and welfare of the offender,
6 other inmates, or staff would be jeopardized by the offender's
7 incarceration. Participation in the home detention program for medical
8 or health-related reasons is conditioned on the offender abiding by the
9 rules of the home detention program and complying with court-ordered
10 restitution.

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

13 If the sentencing court finds that an exceptional sentence outside
14 the standard range should be imposed in accordance with RCW
15 9.94A.120(2), the sentence is subject to review only as provided for in
16 RCW 9.94A.210(4).

17 The following are illustrative factors which the court may consider
18 in the exercise of its discretion to impose an exceptional sentence.
19 The following are illustrative only and are not intended to be
20 exclusive reasons for exceptional sentences.

21 (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

7 (2) Aggravating Circumstances

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

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

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

16 (i) The current offense involved multiple victims or multiple
17 incidents per victim;

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

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

22 (iv) The defendant used his or her position of trust, confidence,
23 or fiduciary responsibility to facilitate the commission of the current
24 offense.

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

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

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

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

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

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

4 (vi) The offender used his or her position or status to facilitate
5 the commission of the current offense, including positions of trust,
6 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
7 other medical professional)((~~i-or~~)).

8 (e) The current offense included a finding of sexual motivation
9 pursuant to RCW 9.94A.127(~~(i)~~).

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

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

16 (h) The offense was committed for the benefit of, at the direction
17 of, or in association with any criminal street gang as defined in RCW
18 9.94A.030, with the specific intent to promote, further, or assist in
19 any criminal conduct by gang members.

20 NEW SECTION. **Sec. 3.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and shall take
27 effect July 1, 1993.

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