
HOUSE BILL 1374

State of Washington 58th Legislature 2003 Regular Session

By Representatives Carrell, Newhouse, Mielke, Delvin, Boldt, Roach, Holmquist, Benson, Ahern, Condotta and Bush

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1 AN ACT Relating to sentencing enhancements for criminal gang
2 activity; amending RCW 13.40.160; adding a new section to chapter 13.40
3 RCW; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds and declares that:

6 (a) Criminal gang activity is a prevalent problem throughout this
7 state and gang violence has had a tremendous impact on our communities
8 and families;

9 (b) Gang members often view their gang as their "family." Gangs
10 provide their members with negative guidance and undesirable values.
11 This gang subculture perpetuates itself and leads to increased violence
12 and crime;

13 (c) Current law does not sufficiently deter criminal street gang
14 activity.

15 (2) By increasing penalties when an offense is committed for the
16 benefit of, at the direction of, or in association with any criminal
17 street gang, with the intent to promote, further, or assist in criminal
18 conduct by gang members, the legislature intends to convey that

1 involvement in criminal street gangs is unacceptable. The legislature
2 intends to deter criminal street gang activity by providing a
3 sentencing enhancement.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.40 RCW
5 to read as follows:

6 (1) A juvenile adjudicated of a felony offense that is committed
7 for the benefit of, at the direction of, or in association with a
8 criminal street gang, with the intent to promote, further, or assist in
9 criminal conduct by gang members, must receive a sentence enhancement
10 of ninety to one hundred twenty days confinement, at the discretion of
11 the court, as provided in subsection (3) of this section.

12 (2)(a) As used in this section, "criminal street gang" means any
13 ongoing organization, association, or group of three or more persons,
14 whether formal or informal, having a common name or common identifying
15 sign or symbol, and having as one of its primary activities the
16 commission of one or more of the criminal acts enumerated in (b) of
17 this subsection, and whose members individually or collectively engage
18 in or have engaged in a pattern of criminal gang activity.

19 (b) As used in this section, "pattern of criminal gang activity"
20 means the conviction or juvenile adjudication of two or more of the
21 following offenses, provided at least one of these offenses occurred on
22 or after the effective date of this section, and the last of those
23 offenses occurred within three years after a prior offense, and the
24 offenses were committed on separate occasions, or by two or more
25 persons:

- 26 (i) Murder, as defined in RCW 9A.32.030 or 9A.32.050;
- 27 (ii) Robbery, as defined in RCW 9A.56.200 or 9A.56.210;
- 28 (iii) Kidnapping, as defined in RCW 9A.40.020 or 9A.40.030;
- 29 (iv) Theft, as defined in RCW 9A.56.030, 9A.56.040, or 9A.56.050;
- 30 (v) Assault, as defined in RCW 9A.36.011 or 9A.36.021;
- 31 (vi) Delivery or manufacture of controlled substances or possession
32 with intent to deliver or manufacture controlled substances under
33 chapter 69.50 RCW;
- 34 (vii) Drive-by shooting, as defined in RCW 9A.36.045;
- 35 (viii) Reckless endangerment, as defined in RCW 9A.36.050;
- 36 (ix) Arson, as defined in RCW 9A.48.020 or 9A.48.030;
- 37 (x) Intimidating a witness, as defined in RCW 9A.72.110;

- 1 (xi) Taking a motor vehicle without permission, as defined in RCW
2 9A.56.070;
- 3 (xii) Burglary, as defined in RCW 9A.52.020, 9A.52.025, or
4 9A.52.030;
- 5 (xiii) Rape, as defined in RCW 9A.44.040, 9A.44.050, or 9A.44.060;
- 6 (xiv) Money laundering, as defined in RCW 9A.83.020;
- 7 (xv) Extortion, as defined in RCW 9A.56.120 or 9A.56.130;
- 8 (xvi) Malicious mischief, as defined in RCW 9A.48.070, 9A.48.080,
9 or 9A.48.090;
- 10 (xvii) Unlawful possession of a firearm, as defined in RCW
11 9.41.040(1) (a) or (b).
- 12 (3)(a) The court must determine the standard range disposition for
13 the offense for which the respondent was adjudicated under RCW
14 13.40.160. One hundred five days must be added to the entire standard
15 range disposition of confinement, except as provided in (b) of this
16 subsection.
- 17 (b) If the court finds that there are aggravating circumstances,
18 the court may order the imposition of a disposition enhancement that is
19 in excess of one hundred five days, but not to exceed one hundred
20 twenty days. If the court finds that there are mitigating
21 circumstances, the court may impose a disposition enhancement of less
22 than one hundred five days, but not less than ninety days. The court
23 must state the reasons for its choice of sentence enhancements on the
24 record at the time of the disposition.
- 25 (4) Any term of confinement ordered under this section must run
26 consecutively to any term of confinement imposed in the same
27 disposition for other offenses.

28 **Sec. 3.** RCW 13.40.160 and 2002 c 175 s 22 are each amended to read
29 as follows:

30 (1) The standard range disposition for a juvenile adjudicated of an
31 offense is determined according to RCW 13.40.0357.

32 (a) When the court sentences an offender to a local sanction as
33 provided in RCW 13.40.0357 option A, the court shall impose a
34 determinate disposition within the standard ranges, except as provided
35 in subsections (2), (3), and (4) of this section. The disposition may
36 be comprised of one or more local sanctions.

1 (b) When the court sentences an offender to a standard range as
2 provided in RCW 13.40.0357 option A that includes a term of confinement
3 exceeding thirty days, commitment shall be to the department for the
4 standard range of confinement, except as provided in subsections (2),
5 (3), and (4) of this section.

6 (2) If the court concludes, and enters reasons for its conclusion,
7 that disposition within the standard range would effectuate a manifest
8 injustice the court shall impose a disposition outside the standard
9 range, as indicated in option C of RCW 13.40.0357. The court's finding
10 of manifest injustice shall be supported by clear and convincing
11 evidence.

12 A disposition outside the standard range shall be determinate and
13 shall be comprised of confinement or community supervision, or a
14 combination thereof. When a judge finds a manifest injustice and
15 imposes a sentence of confinement exceeding thirty days, the court
16 shall sentence the juvenile to a maximum term, and the provisions of
17 RCW 13.40.030(2) shall be used to determine the range. A disposition
18 outside the standard range is appealable under RCW 13.40.230 by the
19 state or the respondent. A disposition within the standard range is
20 not appealable under RCW 13.40.230.

21 (3) When a juvenile offender is found to have committed a sex
22 offense, other than a sex offense that is also a serious violent
23 offense as defined by RCW 9.94A.030, and has no history of a prior sex
24 offense, the court, on its own motion or the motion of the state or the
25 respondent, may order an examination to determine whether the
26 respondent is amenable to treatment.

27 The report of the examination shall include at a minimum the
28 following: The respondent's version of the facts and the official
29 version of the facts, the respondent's offense history, an assessment
30 of problems in addition to alleged deviant behaviors, the respondent's
31 social, educational, and employment situation, and other evaluation
32 measures used. The report shall set forth the sources of the
33 evaluator's information.

34 The examiner shall assess and report regarding the respondent's
35 amenability to treatment and relative risk to the community. A
36 proposed treatment plan shall be provided and shall include, at a
37 minimum:

1 (a)(i) Frequency and type of contact between the offender and
2 therapist;

3 (ii) Specific issues to be addressed in the treatment and
4 description of planned treatment modalities;

5 (iii) Monitoring plans, including any requirements regarding living
6 conditions, lifestyle requirements, and monitoring by family members,
7 legal guardians, or others;

8 (iv) Anticipated length of treatment; and

9 (v) Recommended crime-related prohibitions.

10 The court on its own motion may order, or on a motion by the state
11 shall order, a second examination regarding the offender's amenability
12 to treatment. The evaluator shall be selected by the party making the
13 motion. The defendant shall pay the cost of any second examination
14 ordered unless the court finds the defendant to be indigent in which
15 case the state shall pay the cost.

16 After receipt of reports of the examination, the court shall then
17 consider whether the offender and the community will benefit from use
18 of this special sex offender disposition alternative and consider the
19 victim's opinion whether the offender should receive a treatment
20 disposition under this section. If the court determines that this
21 special sex offender disposition alternative is appropriate, then the
22 court shall impose a determinate disposition within the standard range
23 for the offense, or if the court concludes, and enters reasons for its
24 conclusions, that such disposition would cause a manifest injustice,
25 the court shall impose a disposition under option C, and the court may
26 suspend the execution of the disposition and place the offender on
27 community supervision for at least two years. As a condition of the
28 suspended disposition, the court may impose the conditions of community
29 supervision and other conditions, including up to thirty days of
30 confinement and requirements that the offender do any one or more of
31 the following:

32 (b)(i) Devote time to a specific education, employment, or
33 occupation;

34 (ii) Undergo available outpatient sex offender treatment for up to
35 two years, or inpatient sex offender treatment not to exceed the
36 standard range of confinement for that offense. A community mental
37 health center may not be used for such treatment unless it has an
38 appropriate program designed for sex offender treatment. The

1 respondent shall not change sex offender treatment providers or
2 treatment conditions without first notifying the prosecutor, the
3 probation counselor, and the court, and shall not change providers
4 without court approval after a hearing if the prosecutor or probation
5 counselor object to the change;

6 (iii) Remain within prescribed geographical boundaries and notify
7 the court or the probation counselor prior to any change in the
8 offender's address, educational program, or employment;

9 (iv) Report to the prosecutor and the probation counselor prior to
10 any change in a sex offender treatment provider. This change shall
11 have prior approval by the court;

12 (v) Report as directed to the court and a probation counselor;

13 (vi) Pay all court-ordered legal financial obligations, perform
14 community restitution, or any combination thereof;

15 (vii) Make restitution to the victim for the cost of any counseling
16 reasonably related to the offense;

17 (viii) Comply with the conditions of any court-ordered probation
18 bond; or

19 (ix) The court shall order that the offender may not attend the
20 public or approved private elementary, middle, or high school attended
21 by the victim or the victim's siblings. The parents or legal guardians
22 of the offender are responsible for transportation or other costs
23 associated with the offender's change of school that would otherwise be
24 paid by the school district. The court shall send notice of the
25 disposition and restriction on attending the same school as the victim
26 or victim's siblings to the public or approved private school the
27 juvenile will attend, if known, or if unknown, to the approved private
28 schools and the public school district board of directors of the
29 district in which the juvenile resides or intends to reside. This
30 notice must be sent at the earliest possible date but not later than
31 ten calendar days after entry of the disposition.

32 The sex offender treatment provider shall submit quarterly reports
33 on the respondent's progress in treatment to the court and the parties.
34 The reports shall reference the treatment plan and include at a minimum
35 the following: Dates of attendance, respondent's compliance with
36 requirements, treatment activities, the respondent's relative progress
37 in treatment, and any other material specified by the court at the time
38 of the disposition.

1 At the time of the disposition, the court may set treatment review
2 hearings as the court considers appropriate.

3 Except as provided in this subsection (3), after July 1, 1991,
4 examinations and treatment ordered pursuant to this subsection shall
5 only be conducted by sex offender treatment providers certified by the
6 department of health pursuant to chapter 18.155 RCW. A sex offender
7 therapist who examines or treats a juvenile sex offender pursuant to
8 this subsection does not have to be certified by the department of
9 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
10 offender has already moved to another state or plans to move to another
11 state for reasons other than circumventing the certification
12 requirements; (B) no certified providers are available for treatment
13 within a reasonable geographical distance of the offender's home; and
14 (C) the evaluation and treatment plan comply with this subsection (3)
15 and the rules adopted by the department of health.

16 If the offender violates any condition of the disposition or the
17 court finds that the respondent is failing to make satisfactory
18 progress in treatment, the court may revoke the suspension and order
19 execution of the disposition or the court may impose a penalty of up to
20 thirty days' confinement for violating conditions of the disposition.
21 The court may order both execution of the disposition and up to thirty
22 days' confinement for the violation of the conditions of the
23 disposition. The court shall give credit for any confinement time
24 previously served if that confinement was for the offense for which the
25 suspension is being revoked.

26 For purposes of this section, "victim" means any person who has
27 sustained emotional, psychological, physical, or financial injury to
28 person or property as a direct result of the crime charged. "Victim"
29 may also include a known parent or guardian of a victim who is a minor
30 child unless the parent or guardian is the perpetrator of the offense.

31 A disposition entered under this subsection (3) is not appealable
32 under RCW 13.40.230.

33 (4) If the juvenile offender is subject to a standard range
34 disposition of local sanctions or 15 to 36 weeks of confinement and has
35 not committed an A- or B+ offense, the court may impose the disposition
36 alternative under RCW 13.40.165.

37 (5) RCW 13.40.193 shall govern the disposition of any juvenile

1 adjudicated of possessing a firearm in violation of RCW
2 9.41.040(1)(b)(iii) or any crime in which a special finding is entered
3 that the juvenile was armed with a firearm.

4 (6) Section 2 of this act governs the disposition of any juvenile
5 adjudicated of a felony offense committed for the benefit of, at the
6 direction of, or in association with a criminal street gang, with the
7 intent of promoting, furthering, or assisting in criminal conduct by
8 gang members.

9 (7) Whenever a juvenile offender is entitled to credit for time
10 spent in detention prior to a dispositional order, the dispositional
11 order shall specifically state the number of days of credit for time
12 served.

13 ~~((7))~~ (8) Except as provided under subsection (3) or (4) of this
14 section or RCW 13.40.127, the court shall not suspend or defer the
15 imposition or the execution of the disposition.

16 ~~((8))~~ (9) In no case shall the term of confinement imposed by the
17 court at disposition exceed that to which an adult could be subjected
18 for the same offense.

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