

HOUSE BILL REPORT

HB 2344

*As Reported By House Committee on:
Judiciary*

Title: An act relating to participation in criminal street gangs.

Brief Description: Prescribing penalties for criminal street gang activities.

Sponsor(s): 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, Sprengle and Hochstatter.

Brief History:

Reported by House Committee on:
Judiciary, February 6, 1992, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 14 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Forner; Inslee; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; and Vance.

Minority Report: *Do not pass.* Signed by 3 members: Representatives Belcher; Hargrove; and R. Meyers.

Staff: Bill Perry (786-7123).

Background: There has been increasing concern in recent years about the phenomenon of "street gang" criminal activity. Street gangs are often associated with illegal drug activity and various crimes of violence, including "drive-by" shootings and inter-gang warfare.

A person who commits any of these crimes is, of course, subject to prosecution. A person may also be criminally liable for an "anticipatory" offense involving a crime. Anticipatory offenses include attempting to commit a crime or conspiring with another to commit a crime. However,

anticipatory offenses require that the defendant, or a co-conspirator, has taken "a substantial step" toward the commission of the crime.

Under the state's criminal profiteering law, a person may also be convicted of the crime of "leading organized crime." This offense is committed by a person who organizes or directs three or more others with the intent to engage in a pattern of criminal profiteering, or who incites others to violence in furtherance of a pattern of criminal profiteering. Criminal profiteering is defined as commission, attempt to commit, or conspiracy to commit any one of a number of crimes including murder, assault, theft, gambling, extortion, arson, promoting prostitution or pornography, and drug dealing. A "pattern" of profiteering means three such crimes within five years, not counting any time spent in prison, if all three crimes exhibit the same or similar intent, results, accomplices, principals, victims, or methods, or are otherwise interrelated by distinguishing characteristics.

Generally, statutes that attempt to make mere membership in an organization illegal will be found unconstitutional as an infringement on the right of association. Some states, including California, have enacted street gang laws that make membership in gangs illegal when coupled with some element of intent to further criminal activity.

Summary of Substitute Bill: Committing any felony in association with, or at the direction of, or for the benefit of a criminal street gang is an aggravating circumstance under the Sentencing Reform Act. That aggravating circumstance may be used to justify an exceptional sentence beyond the standard range provided for the felony.

A "criminal street gang" is defined as an ongoing association of three or more persons that has crime as one of its primary activities, has a common name, and whose members individually or collectively engage in a pattern of criminal activity. A pattern of criminal gang activity means commission, attempted commission, or solicitation of two or more crimes within one year when the crimes are committed on separate occasions or by two or more persons.

Substitute Bill Compared to Original Bill: The original bill creates a gross misdemeanor crime of belonging to or participating in a criminal street gang. In addition, the original bill includes certain identifying factors to be considered in determining whether a gang exists. These factors include gang colors, hand signs, symbols, tattoos, and clothing.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect July 1, 1992.

Testimony For: (Original bill): The bill will help deter kids from joining gangs. The presence of an aggravating factor at sentencing will be particularly useful.

Testimony Against: (Original bill): The bill will lead to discrimination against youths based on their appearance. The criminal law should concentrate on persons' criminal acts, not their membership in groups. Judges can already consider gang activity in giving exceptional sentences.

Witnesses: Mike Redman, Washington Association of Prosecuting Attorneys (in favor); John Ringer and Barry McColeman, Tacoma Police Department (in favor); Wayne Perryman, Campus Violence Consultants (opposed); Harriet Walden, Mothers Against Police Harassment (opposed); Omari Salisbury (opposed); Michael Hanbey, Washington Association of Criminal Defense Lawyers (opposed); Jerry Sheehan, American Civil Liberties Union (opposed); and Leo Port, Seattle Police Department (opposed in part).