

1 **E2SSB 5451** - H AMD TO H AMD (H2670.1)

2 By Representative Vance

3 On page 9, after line 30, insert the following:

4 "(46) "Criminal street gang" means any ongoing organization,
5 association, or group of three or more persons, whether formal or
6 informal, that has as one of its primary activities the commission
7 of a criminal act or acts."

8 On page 39, after line 12, insert the following section:

9 **"Sec. 10.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended
10 to read as follows:

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

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

19 (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

15 (2) Aggravating Circumstances

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

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

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

25 (i) The current offense involved multiple victims or multiple
26 incidents per victim;

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

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

1 (iv) The defendant used his or her position of trust,
2 confidence, or fiduciary responsibility to facilitate the
3 commission of the current offense.

4 (d) The current offense was a major violation of the Uniform
5 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
6 trafficking in controlled substances, which was more onerous than
7 the typical offense of its statutory definition: The presence of
8 ANY of the following may identify a current offense as a major
9 VUCSA:

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

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

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

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

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

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

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

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

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

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

EFFECT: The amendment adds SHB 1516 dealing with street gangs
to the bill.

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