

HOUSE BILL REPORT

SB 6041

As Passed House - Amended
March 4, 1994

Title: An act relating to sentencing for crimes committed by gang members.

Brief Description: Prescribing penalties for criminal street gang activities.

Sponsors: Senators Ludwig, A. Smith, Winsley, Oke, Nelson and McAuliffe.

Brief History:

Reported by House Committee on:
Corrections, February 24, 1994, DP.
Passed House - Amended, March 4, 1994, 90-7.

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass. Signed by 6 members:
Representatives Morris, Chair; Mastin, Vice Chair; Long,
Ranking Minority Member; Moak; Ogden and Padden.

Minority Report: Do not pass. Signed by 2 members:
Representatives G. Cole and L. Johnson.

Staff: Rick Neidhardt (786-7841).

Background: Under the Sentencing Reform Act, an offender is sentenced based on a standard sentencing range. This standard range is calculated based on the offender's criminal history and the seriousness of the offense. The sentencing court must impose a sentence within this standard range unless the court finds that substantial and compelling circumstances exist to impose an exceptional sentence.

Exceptional sentences that exceed the standard range must be based on "aggravating circumstances." The Sentencing Reform Act lists a number of examples of aggravating circumstances. Because this list is non-exclusive, courts may supplement this list with additional circumstances.

The statutory list of aggravating circumstances does not mention crimes committed in furtherance of a street gang's criminal activities. Washington's appellate courts, however, have concluded that a proper aggravating

circumstance exists when a crime is committed in furtherance of a street gang's criminal enterprise or when the crime is "gang motivated" or "gang related."

Summary of Bill: The statutory list of circumstances justifying an exceptional sentence is expanded to include offenses that were motivated by an intent to further criminal gang-related activity. The bill defines "criminal gang-related activity" as illegal activity collectively engaged in by a group of three or more persons whose intent is to further the unlawful enterprise of a criminal gang.

The Sentencing Guidelines Commission shall study for a period of one year any racially disparate impact caused by this basis for imposing an exceptional sentence. The Legislature shall address any disparate impact found by the Sentencing Guidelines Commission.

Fiscal Note: Available.

Effective Date: July 1, 1994.

Testimony For: The courts have already begun imposing exceptional sentences for gang-related crimes. The bill assists sentencing judges because it defines "criminal street gang" and it makes clear to the judges that this aggravating circumstance is available. The bill gives discretionary power to judges and therefore is consistent with the spirit of SHB 2906, which expands many discretionary powers of sentencing judges.

Testimony Against: Imposing additional punishment for gang-related crimes violates the First Amendment's right of association. The definition of "criminal street gang" is too broad and too vague. The bill will disproportionately affect minorities and poor people. The bill is unnecessary, as other aggravating circumstances already exist that would allow for exceptional sentences in these cases. Crimes that are committed to promote a group's criminal activities should be charged as involving accomplices or conspirators.

Witnesses: Senator Curtis L. Ludwig, prime sponsor (pro); and Sherry Appleton, Washington Association of Criminal Defense Lawyers (con).