

2 **2SHB 1522** - S COMM AMD
3 By Committee on Law & Justice

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
8 to read as follows:

9 A minimum additional term of two years shall be added to the
10 presumptive sentence for any felony offense committed for the benefit
11 of, at the direction of, or in association with any ongoing group
12 consisting of three or more persons, whether formal or informal, having
13 a common name or common identifying sign or symbol, who act in concert
14 for criminal purposes, and who are commonly recognized as a street
15 gang. This determination shall be made by the court at sentencing.
16 Notwithstanding any other provision of law, an enhancement under this
17 section is mandatory, and shall not run concurrently with any other
18 sentencing provisions.

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

21 (1) If a juvenile is adjudicated of a felony offense that is
22 committed for the benefit of, at the direction of, or in association
23 with any ongoing group consisting of three or more persons, whether
24 formal or informal, having a common name or common identifying sign or
25 symbol, who act in concert for criminal purposes, and who are commonly
26 recognized as a street gang, the court must add a minimum of one
27 hundred five days to the entire standard range disposition of
28 confinement.

29 (2) Option B of schedule D-2, RCW 13.40.0357, is not available for
30 middle offenders who receive a disposition under this section. When a
31 disposition under this section would effectuate a manifest injustice,
32 the court may impose another disposition. When a judge finds a
33 manifest injustice and imposes a disposition of confinement exceeding
34 thirty days, the judge must commit the juvenile to the maximum term,
35 and the provisions of RCW 13.40.030(2) shall be used to determine the

1 range. When a judge finds a manifest injustice and imposes a
2 disposition of confinement less than thirty days, the disposition may
3 be comprised of confinement, community supervision, or both.

4 (3) Any term of confinement ordered under this section must run
5 consecutively to any term of confinement imposed in the same
6 disposition for other offenses.

7 **Sec. 3.** RCW 13.40.160 and 1995 c 395 s 7 are each amended to read
8 as follows:

9 (1) When the respondent is found to be a serious offender, the
10 court shall commit the offender to the department for the standard
11 range of disposition for the offense, as indicated in option A of
12 schedule D-3, RCW 13.40.0357 except as provided in subsections (5)
13 (~~and~~), (6), and (7) of this section.

14 If the court concludes, and enters reasons for its conclusion, that
15 disposition within the standard range would effectuate a manifest
16 injustice the court shall impose a disposition outside the standard
17 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
18 court's finding of manifest injustice shall be supported by clear and
19 convincing evidence.

20 A disposition outside the standard range shall be determinate and
21 shall be comprised of confinement or community supervision, or a
22 combination thereof. When a judge finds a manifest injustice and
23 imposes a sentence of confinement exceeding thirty days, the court
24 shall sentence the juvenile to a maximum term, and the provisions of
25 RCW 13.40.030(2) shall be used to determine the range. A disposition
26 outside the standard range is appealable under RCW 13.40.230 by the
27 state or the respondent. A disposition within the standard range is
28 not appealable under RCW 13.40.230.

29 (2) Where the respondent is found to be a minor or first offender,
30 the court shall order that the respondent serve a term of community
31 supervision as indicated in option A or option B of schedule D-1, RCW
32 13.40.0357 except as provided in subsections (5) and (6) of this
33 section. If the court determines that a disposition of community
34 supervision would effectuate a manifest injustice the court may impose
35 another disposition under option C of schedule D-1, RCW 13.40.0357.
36 Except as provided in subsection (5) of this section, a disposition
37 other than a community supervision may be imposed only after the court
38 enters reasons upon which it bases its conclusions that imposition of

1 community supervision would effectuate a manifest injustice. When a
2 judge finds a manifest injustice and imposes a sentence of confinement
3 exceeding thirty days, the court shall sentence the juvenile to a
4 maximum term, and the provisions of RCW 13.40.030(2) shall be used to
5 determine the range. The court's finding of manifest injustice shall
6 be supported by clear and convincing evidence.

7 Except for disposition of community supervision or a disposition
8 imposed pursuant to subsection (5) of this section, a disposition may
9 be appealed as provided in RCW 13.40.230 by the state or the
10 respondent. A disposition of community supervision or a disposition
11 imposed pursuant to subsection (5) of this section may not be appealed
12 under RCW 13.40.230.

13 (3) Where a respondent is found to have committed an offense for
14 which the respondent declined to enter into a diversion agreement, the
15 court shall impose a term of community supervision limited to the
16 conditions allowed in a diversion agreement as provided in RCW
17 13.40.080(2).

18 (4) If a respondent is found to be a middle offender:

19 (a) The court shall impose a determinate disposition within the
20 standard range(s) for such offense, as indicated in option A of
21 schedule D-2, RCW 13.40.0357 except as provided in subsections (5)
22 (~~and~~), (6), and (7) of this section. If the standard range includes
23 a term of confinement exceeding thirty days, commitment shall be to the
24 department for the standard range of confinement; or

25 (b) If the middle offender has less than 110 points, the court
26 shall impose a determinate disposition of community supervision and/or
27 up to thirty days confinement, as indicated in option B of schedule D-
28 2, RCW 13.40.0357 in which case, if confinement has been imposed, the
29 court shall state either aggravating or mitigating factors as set forth
30 in RCW 13.40.150. If the middle offender has 110 points or more, the
31 court may impose a disposition under option A and may suspend the
32 disposition on the condition that the offender serve up to thirty days
33 of confinement and follow all conditions of community supervision. If
34 the offender violates any condition of the disposition including
35 conditions of a probation bond, the court may impose sanctions pursuant
36 to RCW 13.40.200 or may revoke the suspension and order execution of
37 the disposition. The court shall give credit for any confinement time
38 previously served if that confinement was for the offense for which the
39 suspension is being revoked.

1 (c) Only if the court concludes, and enters reasons for its
2 conclusions, that disposition as provided in subsection (4)(a) or (b)
3 of this section would effectuate a manifest injustice, the court shall
4 sentence the juvenile to a maximum term, and the provisions of RCW
5 13.40.030(2) shall be used to determine the range. The court's finding
6 of manifest injustice shall be supported by clear and convincing
7 evidence.

8 (d) A disposition pursuant to subsection (4)(c) of this section is
9 appealable under RCW 13.40.230 by the state or the respondent. A
10 disposition pursuant to subsection (4)(a) or (b) of this section is not
11 appealable under RCW 13.40.230.

12 (5) When a serious, middle, or minor first offender is found to
13 have committed a sex offense, other than a sex offense that is also a
14 serious violent offense as defined by RCW 9.94A.030, and has no history
15 of a prior sex offense, the court, on its own motion or the motion of
16 the state or the respondent, may order an examination to determine
17 whether the respondent is amenable to treatment.

18 The report of the examination shall include at a minimum the
19 following: The respondent's version of the facts and the official
20 version of the facts, the respondent's offense history, an assessment
21 of problems in addition to alleged deviant behaviors, the respondent's
22 social, educational, and employment situation, and other evaluation
23 measures used. The report shall set forth the sources of the
24 evaluator's information.

25 The examiner shall assess and report regarding the respondent's
26 amenability to treatment and relative risk to the community. A
27 proposed treatment plan shall be provided and shall include, at a
28 minimum:

29 (a)(i) Frequency and type of contact between the offender and
30 therapist;

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

33 (iii) Monitoring plans, including any requirements regarding living
34 conditions, lifestyle requirements, and monitoring by family members,
35 legal guardians, or others;

36 (iv) Anticipated length of treatment; and

37 (v) Recommended crime-related prohibitions.

38 The court on its own motion may order, or on a motion by the state
39 shall order, a second examination regarding the offender's amenability

1 to treatment. The evaluator shall be selected by the party making the
2 motion. The defendant shall pay the cost of any second examination
3 ordered unless the court finds the defendant to be indigent in which
4 case the state shall pay the cost.

5 After receipt of reports of the examination, the court shall then
6 consider whether the offender and the community will benefit from use
7 of this special sex offender disposition alternative and consider the
8 victim's opinion whether the offender should receive a treatment
9 disposition under this section. If the court determines that this
10 special sex offender disposition alternative is appropriate, then the
11 court shall impose a determinate disposition within the standard range
12 for the offense, and the court may suspend the execution of the
13 disposition and place the offender on community supervision for up to
14 two years. As a condition of the suspended disposition, the court may
15 impose the conditions of community supervision and other conditions,
16 including up to thirty days of confinement and requirements that the
17 offender do any one or more of the following:

18 (b)(i) Devote time to a specific education, employment, or
19 occupation;

20 (ii) Undergo available outpatient sex offender treatment for up to
21 two years, or inpatient sex offender treatment not to exceed the
22 standard range of confinement for that offense. A community mental
23 health center may not be used for such treatment unless it has an
24 appropriate program designed for sex offender treatment. The
25 respondent shall not change sex offender treatment providers or
26 treatment conditions without first notifying the prosecutor, the
27 probation counselor, and the court, and shall not change providers
28 without court approval after a hearing if the prosecutor or probation
29 counselor object to the change;

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

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

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

37 (vi) Pay all court-ordered legal financial obligations, perform
38 community service, or any combination thereof;

1 (vii) Make restitution to the victim for the cost of any counseling
2 reasonably related to the offense; or

3 (viii) Comply with the conditions of any court-ordered probation
4 bond.

5 The sex offender treatment provider shall submit quarterly reports
6 on the respondent's progress in treatment to the court and the parties.
7 The reports shall reference the treatment plan and include at a minimum
8 the following: Dates of attendance, respondent's compliance with
9 requirements, treatment activities, the respondent's relative progress
10 in treatment, and any other material specified by the court at the time
11 of the disposition.

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

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

27 If the offender violates any condition of the disposition or the
28 court finds that the respondent is failing to make satisfactory
29 progress in treatment, the court may revoke the suspension and order
30 execution of the disposition or the court may impose a penalty of up to
31 thirty days' confinement for violating conditions of the disposition.
32 The court may order both execution of the disposition and up to thirty
33 days' confinement for the violation of the conditions of the
34 disposition. The court shall give credit for any confinement time
35 previously served if that confinement was for the offense for which the
36 suspension is being revoked.

37 For purposes of this section, "victim" means any person who has
38 sustained emotional, psychological, physical, or financial injury to
39 person or property as a direct result of the crime charged. "Victim"

1 may also include a known parent or guardian of a victim who is a minor
2 child unless the parent or guardian is the perpetrator of the offense.

3 (6) RCW 13.40.193 shall govern the disposition of any juvenile
4 adjudicated of possessing a firearm in violation of RCW
5 9.41.040(1)((+e)) (b)(iii) or any crime in which a special finding is
6 entered that the juvenile was armed with a firearm.

7 (7) Section 2 of this act governs the disposition of any juvenile
8 adjudicated of a felony offense committed for the benefit of, at the
9 direction of, or in association with a street gang.

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

14 ((+8)) (9) Except as provided for in subsection (4)(b) or (5) of
15 this section or RCW 13.40.125, the court shall not suspend or defer the
16 imposition or the execution of the disposition.

17 ((+9)) (10) In no case shall the term of confinement imposed by
18 the court at disposition exceed that to which an adult could be
19 subjected for the same offense.

20 NEW SECTION. Sec. 4. If specific funding for the purposes of this
21 act, referencing this act by bill or chapter number, is not provided by
22 June 30, 1997, in the omnibus appropriations act, this act is null and
23 void."

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27 On page 1, line 1 of the title, after "sentencing;" strike the
28 remainder of the title and insert "amending RCW 13.40.160; adding a new
29 section to chapter 9.94A RCW; adding a new section to chapter 13.40
30 RCW; creating a new section; and prescribing penalties."

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