
SENATE BILL 5752

State of Washington 54th Legislature 1995 Regular Session

By Senators Kohl, Prentice, Fairley and Pelz

Read first time 02/03/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to increasing penalties for armed crimes; amending
2 RCW 9.94A.310, 9.94A.150, 9A.36.045, 9A.52.020, 9A.56.300, 9A.56.030,
3 9A.56.040, 9A.56.150, 9A.56.160, 9.41.040, and 10.95.020; reenacting
4 and amending RCW 9.94A.320; adding new sections to chapter 9.94A RCW;
5 adding a new section to chapter 9A.56 RCW; creating new sections; and
6 prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature
9 finds and declares that:

10 (a) Armed criminals pose an increasing and major threat to public
11 safety and can turn any crime into serious injury or death.

12 (b) Criminals carry deadly weapons for several key reasons
13 including: Forcing the victim to comply with their demands; injuring
14 or killing anyone who tries to stop the criminal acts; and aiding the
15 criminal in escaping.

16 (c) Current law does not sufficiently stigmatize the carrying and
17 use of deadly weapons by criminals, and far too often there are no
18 deadly weapon enhancements provided for many felonies, including

1 murder, arson, manslaughter, and child molestation and many other sex
2 offenses including child luring.

3 (d) Current law also fails to distinguish between gun-carrying
4 criminals and criminals carrying knives or clubs.

5 (2) By increasing the penalties for carrying and using deadly
6 weapons by criminals and closing loopholes involving armed criminals,
7 the legislature intends to:

8 (a) Stigmatize the carrying and use of any deadly weapons for all
9 felonies with proper deadly weapon enhancements.

10 (b) Reduce the number of armed offenders by making the carrying and
11 use of the deadly weapon not worth the sentence received upon
12 conviction.

13 (c) Distinguish between the gun predators and criminals carrying
14 other deadly weapons and provide greatly increased penalties for gun
15 predators and for those offenders committing crimes to acquire
16 firearms.

17 (d) Bring accountability and certainty into the sentencing system
18 by tracking individual judges and holding them accountable for their
19 sentencing practices in relation to the state's sentencing guidelines
20 for serious crimes.

21 **Sec. 2.** RCW 9.94A.310 and 1994 sp.s. c 7 s 512 are each amended to
22 read as follows:

23 FIREARM AND OTHER DEADLY WEAPON ENHANCEMENTS INCREASED.

24 (1) TABLE 1

25 Sentencing Grid

26 SERIOUSNESS

27 SCORE

OFFENDER SCORE

28
29 0 1 2 3 4 5 6 7 8 9 or
30 more

31 XV Life Sentence without Parole/Death Penalty

32
33 XIV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m 36y 40y
34 240- 250- 261- 271- 281- 291- 312- 338- 370- 411-
35 320 333 347 361 374 388 416 450 493 548

1	XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
2		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
3		164	178	192	205	219	233	260	288	342	397
4											
5	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
6		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
7		123	136	147	160	171	184	216	236	277	318
8											
9	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
10		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
11		102	114	125	136	147	158	194	211	245	280
12											
13	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
14		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
15		68	75	82	89	96	102	130	144	171	198
16											
17	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
18		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
19		41	48	54	61	68	75	102	116	144	171
20											
21	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
22		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
23		27	34	41	48	54	61	89	102	116	144
24											
25	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
26		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
27		20	27	34	41	48	54	75	89	102	116
28											
29	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
30		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
31		14	20	27	34	41	48	61	75	89	102
32											
33	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
34		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
35		12	14	17	20	29	43	54	68	82	96
36											
37	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
38		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
39		9	12	14	17	20	29	43	57	70	84

1											
2	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
3		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
4		3	8	12	12	16	22	29	43	57	68
5											
6	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
7		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
8		Days	6	9	12	14	18	22	29	43	57
9											
10	I			3m	4m	5m	8m	13m	16m	20m	2y2m
11		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
12		Days	Days	5	6	8	12	14	18	22	29
13											

14 NOTE: Numbers in the first horizontal row of each seriousness category
15 represent sentencing midpoints in years(y) and months(m). Numbers in
16 the second and third rows represent presumptive sentencing ranges in
17 months, or in days if so designated. 12+ equals one year and one day.

18 (2) For persons convicted of the anticipatory offenses of criminal
19 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
20 presumptive sentence is determined by locating the sentencing grid
21 sentence range defined by the appropriate offender score and the
22 seriousness level of the completed crime, and multiplying the range by
23 75 percent.

24 (3) The following additional times shall be added to the
25 presumptive sentence for any violent offense, sex offense, drug
26 offense, or residential burglary committed after the effective date of
27 this section if the offender or an accomplice was armed with a firearm
28 as defined in RCW 9.41.010. If the offender or an accomplice was armed
29 with a firearm as defined in RCW 9.41.010 and the offender is being
30 sentenced for an anticipatory offense under chapter 9A.28 RCW to commit
31 one of the crimes listed in this subsection as eligible for any firearm
32 enhancements, the following additional times shall be added to the
33 presumptive sentence determined under subsection (2) of this section
34 based on the felony crime of conviction as classified under RCW
35 9A.28.020:

36 (a) Five years for any felony defined under any law as a class A
37 felony or with a maximum sentence of at least twenty years, or both.

1 (b) Three years for any felony defined under any law as a class B
2 felony or with a maximum sentence of ten years, or both.

3 (c) Eighteen months for any felony defined under any law as a
4 class C felony or with a maximum sentence of five years, or both.

5 (d) If the offender is being sentenced for any firearm
6 enhancements under (a), (b), and/or (c) of this subsection and the
7 offender has previously been sentenced for any deadly weapon
8 enhancements after the effective date of this section under (a), (b),
9 and/or (c) of this subsection or subsection (4) (a), (b), and/or (c) of
10 this section, or both, any and all firearm enhancements under this
11 subsection shall be twice the amount of the enhancement listed.

12 (e) Notwithstanding any other provision of law, any and all
13 firearm enhancements under this section are mandatory, shall be served
14 in total confinement, and shall not run concurrently with any other
15 sentencing provisions.

16 (f) If the presumptive sentence under this section exceeds the
17 statutory maximum for the offense, the statutory maximum sentence shall
18 be the presumptive sentence unless the offender is a persistent
19 offender as defined in RCW 9.94A.030.

20 (4) The following additional times shall be added to the
21 presumptive sentence for any violent offense, sex offense, drug
22 offense, or residential burglary committed after the effective date of
23 this section if the offender or an accomplice was armed with a deadly
24 weapon as defined in this chapter (~~and the offender is being sentenced~~
25 ~~for one of the crimes listed in this subsection~~) other than a firearm
26 as defined in RCW 9.41.010. If the offender or an accomplice was armed
27 with a deadly weapon other than a firearm as defined in RCW 9.41.010
28 and the offender is being sentenced for an anticipatory offense under
29 chapter 9A.28 RCW to commit one of the crimes listed in this subsection
30 as eligible for any deadly weapon enhancements, the following
31 additional times shall be added to the presumptive ((range)) sentence
32 determined under subsection (2) of this section based on the felony
33 crime of conviction as classified under RCW 9A.28.020:

34 (a) (~~24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW~~
35 ~~9A.56.200), or Kidnapping 1 (RCW 9A.40.020);~~) Two years for any felony
36 defined under any law as a class A felony or with a maximum sentence of
37 at least twenty years, or both.

1 (b) ~~((18 months for Burglary 1 (RCW 9A.52.020);))~~ One year for any
2 felony defined under any law as a class B felony or with a maximum
3 sentence of ten years, or both.

4 (c) ~~((12 months for any violent offense except as provided in (a)~~
5 ~~and (b) of this subsection, Escape 1 (RCW 9A.76.110), Burglary 2 of a~~
6 ~~building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or~~
7 ~~2 (RCW 9A.56.080), or any drug offense))~~ Six months for any felony
8 defined under any law as a class C felony or with a maximum sentence of
9 five years, or both.

10 (d) If the offender is being sentenced under (a), (b), and/or (c)
11 of this subsection for any deadly weapon enhancements and the offender
12 has previously been sentenced for any deadly weapon enhancements after
13 the effective date of this section under (a), (b), and/or (c) of this
14 subsection or subsection (3) (a), (b), and/or (c) of this section, or
15 both, any and all deadly weapon enhancements under this subsection
16 shall be twice the amount of the enhancement listed.

17 (e) Notwithstanding any other provision of law, any and all deadly
18 weapon enhancements under this section are mandatory, shall be served
19 in total confinement, and shall not run concurrently with any other
20 sentencing provisions.

21 (f) If the presumptive sentence under this section exceeds the
22 statutory maximum for the offense, the statutory maximum sentence shall
23 be the presumptive sentence unless the offender is a persistent
24 offender as defined in RCW 9.94A.030.

25 ~~((4))~~ (5) The following additional times shall be added to the
26 presumptive sentence if the offender or an accomplice committed the
27 offense while in a county jail or state correctional facility as that
28 term is defined in this chapter and the offender is being sentenced for
29 one of the crimes listed in this subsection. If the offender or an
30 accomplice committed one of the crimes listed in this subsection while
31 in a county jail or state correctional facility as that term is defined
32 in this chapter, and the offender is being sentenced for an
33 anticipatory offense under chapter 9A.28 RCW to commit one of the
34 crimes listed in this subsection, the following additional times shall
35 be added to the presumptive sentence ~~((range))~~ determined under
36 subsection (2) of this section:

37 (a) Eighteen months for offenses committed under RCW
38 69.50.401(a)(1)(i) or 69.50.410;

1 (b) Fifteen months for offenses committed under RCW
2 69.50.401(a)(1)(ii), (iii), and (iv);

3 (c) Twelve months for offenses committed under RCW 69.50.401(d).

4 For the purposes of this subsection, all of the real property of
5 a state correctional facility or county jail shall be deemed to be part
6 of that facility or county jail.

7 ~~((+5))~~ (6) An additional twenty-four months shall be added to the
8 presumptive sentence for any ranked offense involving a violation of
9 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

10 **Sec. 3.** RCW 9.94A.320 and 1994 sp.s. c 7 s 510, 1994 c 275 s 20,
11 & 1994 c 53 s 2 are each reenacted and amended to read as follows:

12 PENALTIES INCREASED FOR OTHER CRIMES INVOLVING FIREARMS.

13 TABLE 2

14 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

15	XV	Aggravated Murder 1 (RCW 10.95.020)
16	XIV	Murder 1 (RCW 9A.32.030)
17		Homicide by abuse (RCW 9A.32.055)
18	XIII	Murder 2 (RCW 9A.32.050)
19	XII	Assault 1 (RCW 9A.36.011)
20		Assault of a Child 1 (RCW 9A.36.120)
21	XI	Rape 1 (RCW 9A.44.040)
22		Rape of a Child 1 (RCW 9A.44.073)
23	X	Kidnapping 1 (RCW 9A.40.020)
24		Rape 2 (RCW 9A.44.050)
25		Rape of a Child 2 (RCW 9A.44.076)
26		Child Molestation 1 (RCW 9A.44.083)
27		Damaging building, etc., by explosion with
28		threat to human being (RCW
29		70.74.280(1))
30		Over 18 and deliver heroin or narcotic from
31		Schedule I or II to someone under 18
32		(RCW 69.50.406)
33		Leading Organized Crime (RCW
34		9A.82.060(1)(a))

1 IX Assault of a Child 2 (RCW 9A.36.130)
2 Robbery 1 (RCW 9A.56.200)
3 Manslaughter 1 (RCW 9A.32.060)
4 Explosive devices prohibited (RCW 70.74.180)
5 Indecent Liberties (with forcible
6 compulsion) (RCW 9A.44.100(1)(a))
7 Endangering life and property by explosives
8 with threat to human being (RCW
9 70.74.270)
10 Over 18 and deliver narcotic from Schedule
11 III, IV, or V or a nonnarcotic from
12 Schedule I-V to someone under 18 and 3
13 years junior (RCW 69.50.406)
14 Controlled Substance Homicide (RCW
15 69.50.415)
16 Sexual Exploitation (RCW 9.68A.040)
17 Inciting Criminal Profiteering (RCW
18 9A.82.060(1)(b))
19 Vehicular Homicide, by being under the
20 influence of intoxicating liquor or any
21 drug (RCW 46.61.520)
22 VIII Arson 1 (RCW 9A.48.020)
23 Promoting Prostitution 1 (RCW 9A.88.070)
24 Selling for profit (controlled or
25 counterfeit) any controlled substance
26 (RCW 69.50.410)
27 Manufacture, deliver, or possess with intent
28 to deliver heroin or cocaine (RCW
29 69.50.401(a)(1)(i))
30 Manufacture, deliver, or possess with intent
31 to deliver methamphetamine (RCW
32 69.50.401(a)(1)(ii))
33 Vehicular Homicide, by the operation of any
34 vehicle in a reckless manner (RCW
35 46.61.520)

1 VII Burglary 1 (RCW 9A.52.020)
2 Vehicular Homicide, by disregard for the
3 safety of others (RCW 46.61.520)
4 Introducing Contraband 1 (RCW 9A.76.140)
5 Indecent Liberties (without forcible
6 compulsion) (RCW 9A.44.100(1) (b) and
7 (c))
8 Child Molestation 2 (RCW 9A.44.086)
9 Dealing in depictions of minor engaged in
10 sexually explicit conduct (RCW
11 9.68A.050)
12 Sending, bringing into state depictions of
13 minor engaged in sexually explicit
14 conduct (RCW 9.68A.060)
15 Involving a minor in drug dealing (RCW
16 69.50.401(f))
17 Reckless Endangerment 1 (RCW 9A.36.045)
18 Unlawful Possession of a Firearm in the
19 first degree (RCW 9.41.040(1)(a))
20 VI Bribery (RCW 9A.68.010)
21 Manslaughter 2 (RCW 9A.32.070)
22 Rape of a Child 3 (RCW 9A.44.079)
23 Intimidating a Juror/Witness (RCW 9A.72.110,
24 9A.72.130)
25 Damaging building, etc., by explosion with
26 no threat to human being (RCW
27 70.74.280(2))
28 Endangering life and property by explosives
29 with no threat to human being (RCW
30 70.74.270)
31 Incest 1 (RCW 9A.64.020(1))
32 Manufacture, deliver, or possess with intent
33 to deliver narcotics from Schedule I or
34 II (except heroin or cocaine) (RCW
35 69.50.401(a)(1)(i))

1 Intimidating a Judge (RCW 9A.72.160)
2 Bail Jumping with Murder 1 (RCW
3 9A.76.170(2)(a))
4 Theft of a Firearm (RCW 9A.56.300)

5 V Criminal Mistreatment 1 (RCW 9A.42.020)
6 (~~Theft of a Firearm (RCW 9A.56.300)~~
7 ~~Reckless Endangerment 1 (RCW 9A.36.045))~~)
8 Rape 3 (RCW 9A.44.060)
9 Sexual Misconduct with a Minor 1 (RCW
10 9A.44.093)
11 Child Molestation 3 (RCW 9A.44.089)
12 Kidnapping 2 (RCW 9A.40.030)
13 Extortion 1 (RCW 9A.56.120)
14 Incest 2 (RCW 9A.64.020(2))
15 Perjury 1 (RCW 9A.72.020)
16 Extortionate Extension of Credit (RCW
17 9A.82.020)
18 Advancing money or property for extortionate
19 extension of credit (RCW 9A.82.030)
20 Extortionate Means to Collect Extensions of
21 Credit (RCW 9A.82.040)
22 Rendering Criminal Assistance 1 (RCW
23 9A.76.070)
24 Bail Jumping with class A Felony (RCW
25 9A.76.170(2)(b))
26 Sexually Violating Human Remains (RCW
27 9A.44.105)
28 Delivery of imitation controlled substance
29 by person eighteen or over to person
30 under eighteen (RCW 69.52.030(2))
31 Possession of a Stolen Firearm (RCW
32 9A.56.--- (section 12 of this act))

33 IV Residential Burglary (RCW 9A.52.025)
34 Theft of Livestock 1 (RCW 9A.56.080)
35 Robbery 2 (RCW 9A.56.210)
36 Assault 2 (RCW 9A.36.021)
37 Escape 1 (RCW 9A.76.110)
38 Arson 2 (RCW 9A.48.030)

1 Bribing a Witness/Bribe Received by Witness
2 (RCW 9A.72.090, 9A.72.100)
3 Malicious Harassment (RCW 9A.36.080)
4 Threats to Bomb (RCW 9.61.160)
5 Willful Failure to Return from Furlough (RCW
6 72.66.060)
7 Hit and Run « Injury Accident (RCW
8 46.52.020(4))
9 Vehicular Assault (RCW 46.61.522)
10 Manufacture, deliver, or possess with intent
11 to deliver narcotics from Schedule III,
12 IV, or V or nonnarcotics from Schedule
13 I-V (except marijuana or
14 methamphetamines) (RCW
15 69.50.401(a)(1)(ii) through (iv))
16 Influencing Outcome of Sporting Event (RCW
17 9A.82.070)
18 Use of Proceeds of Criminal Profiteering
19 (RCW 9A.82.080 (1) and (2))
20 Knowingly Trafficking in Stolen Property
21 (RCW 9A.82.050(2))
22 III Criminal Mistreatment 2 (RCW 9A.42.030)
23 Extortion 2 (RCW 9A.56.130)
24 Unlawful Imprisonment (RCW 9A.40.040)
25 Assault 3 (RCW 9A.36.031)
26 Assault of a Child 3 (RCW 9A.36.140)
27 Custodial Assault (RCW 9A.36.100)
28 Unlawful possession of firearm (~~(or pistol by felon)~~) in
29 the second degree (RCW 9.41.040(1)(b))
30 Harassment (RCW 9A.46.020)
31 Promoting Prostitution 2 (RCW 9A.88.080)
32 Willful Failure to Return from Work Release
33 (RCW 72.65.070)
34 Burglary 2 (RCW 9A.52.030)
35 Introducing Contraband 2 (RCW 9A.76.150)
36 Communication with a Minor for Immoral
37 Purposes (RCW 9.68A.090)
38 Patronizing a Juvenile Prostitute (RCW
39 9.68A.100)

1 Escape 2 (RCW 9A.76.120)
2 Perjury 2 (RCW 9A.72.030)
3 Bail Jumping with class B or C Felony (RCW
4 9A.76.170(2)(c))
5 Intimidating a Public Servant (RCW
6 9A.76.180)
7 Tampering with a Witness (RCW 9A.72.120)
8 Manufacture, deliver, or possess with intent
9 to deliver marijuana (RCW
10 69.50.401(a)(1)(ii))
11 Delivery of a material in lieu of a
12 controlled substance (RCW 69.50.401(c))
13 Manufacture, distribute, or possess with
14 intent to distribute an imitation
15 controlled substance (RCW 69.52.030(1))
16 Recklessly Trafficking in Stolen Property
17 (RCW 9A.82.050(1))
18 Theft of livestock 2 (RCW 9A.56.080)
19 Securities Act violation (RCW 21.20.400)

20 II Malicious Mischief 1 (RCW 9A.48.070)
21 Possession of Stolen Property 1 (RCW
22 9A.56.150)
23 Theft 1 (RCW 9A.56.030)
24 Possession of controlled substance that is
25 either heroin or narcotics from
26 Schedule I or II (RCW 69.50.401(d))
27 Possession of phencyclidine (PCP) (RCW
28 69.50.401(d))
29 Create, deliver, or possess a counterfeit
30 controlled substance (RCW 69.50.401(b))
31 Computer Trespass 1 (RCW 9A.52.110)
32 Escape from Community Custody (RCW
33 72.09.310)

34 I Theft 2 (RCW 9A.56.040)
35 Possession of Stolen Property 2 (RCW
36 9A.56.160)
37 Forgery (RCW 9A.60.020)

1 Taking Motor Vehicle Without Permission (RCW
2 9A.56.070)
3 Vehicle Prowl 1 (RCW 9A.52.095)
4 Attempting to Elude a Pursuing Police
5 Vehicle (RCW 46.61.024)
6 Malicious Mischief 2 (RCW 9A.48.080)
7 Reckless Burning 1 (RCW 9A.48.040)
8 Unlawful Issuance of Checks or Drafts (RCW
9 9A.56.060)
10 Unlawful Use of Food Stamps (RCW 9.91.140
11 (2) and (3))
12 False Verification for Welfare (RCW
13 74.08.055)
14 Forged Prescription (RCW 69.41.020)
15 Forged Prescription for a Controlled
16 Substance (RCW 69.50.403)
17 Possess Controlled Substance that is a
18 Narcotic from Schedule III, IV, or V or
19 Non-narcotic from Schedule I-V (except
20 phencyclidine) (RCW 69.50.401(d))

21 NEW SECTION. **Sec. 4.** PROSECUTING STANDARDS TIGHTENED FOR ARMED
22 OFFENDERS. Notwithstanding the current placement or listing of crimes
23 in categories or classifications of prosecuting standards for deciding
24 to prosecute under RCW 9.94A.440(2), any and all felony crimes
25 involving any deadly weapon special verdict under RCW 9.94A.125, any
26 deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, and
27 any and all felony crimes as defined in RCW 9.94A.310 (3)(f) or (4)(f),
28 or both, which are excluded from the deadly weapon enhancements shall
29 all be treated as crimes against a person and subject to the
30 prosecuting standards for deciding to prosecute under RCW 9.94A.440(2)
31 as crimes against persons.

32 NEW SECTION. **Sec. 5.** ALL PLEA AGREEMENTS AND SENTENCES FOR
33 VIOLENT, MOST SERIOUS, AND ARMED OFFENDERS MADE A PUBLIC RECORD. Any
34 and all recommended sentencing agreements or plea agreements and the
35 sentences for any and all felony crimes shall be made and retained as
36 public records if the felony crime involves:

- 1 (1) Any violent offense as defined in this chapter;
- 2 (2) Any most serious offense as defined in this chapter;
- 3 (3) Any felony with a deadly weapon special verdict under RCW
4 9.94A.125;
- 5 (4) Any felony with any deadly weapon enhancements under RCW
6 9.94A.310 (3) or (4), or both; and/or
- 7 (5) The felony crimes of possession of a machine gun, possessing
8 a stolen firearm, reckless endangerment in the first degree, theft of
9 a firearm, unlawful possession of a firearm in the first or second
10 degree, and/or use of a machine gun in a felony.

11 **Sec. 6.** RCW 9.94A.150 and 1992 c 145 s 8 are each amended to read
12 as follows:

13 GOOD TIME REMOVED FOR DEADLY WEAPON ENHANCEMENTS. No person
14 serving a sentence imposed pursuant to this chapter and committed to
15 the custody of the department shall leave the confines of the
16 correctional facility or be released prior to the expiration of the
17 sentence except as follows:

18 (1) Except as otherwise provided for in subsection (2) of this
19 section, the term of the sentence of an offender committed to a
20 correctional facility operated by the department, may be reduced by
21 earned early release time in accordance with procedures that shall be
22 developed and promulgated by the correctional agency having
23 jurisdiction in which the offender is confined. The earned early
24 release time shall be for good behavior and good performance, as
25 determined by the correctional agency having jurisdiction. The
26 correctional agency shall not credit the offender with earned early
27 release credits in advance of the offender actually earning the
28 credits. Any program established pursuant to this section shall allow
29 an offender to earn early release credits for presentence
30 incarceration. If an offender is transferred from a county jail to the
31 department of corrections, the county jail facility shall certify to
32 the department the amount of time spent in custody at the facility and
33 the amount of earned early release time. In the case of an offender
34 who has been convicted of an offense committed after the effective date
35 of this section that involves deadly weapon enhancements under RCW
36 9.94A.310 (3) or (4), or both, the offender shall not receive any good
37 time credits or earned early release time for that portion of his or
38 her sentence that results from any deadly weapon enhancements. In the

1 case of an offender convicted of a serious violent offense or a sex
2 offense that is a class A felony committed on or after July 1, 1990,
3 the aggregate earned early release time may not exceed fifteen percent
4 of the sentence. In no other case shall the aggregate earned early
5 release time exceed one-third of the total sentence;

6 (2) A person convicted of a sex offense or an offense categorized
7 as a serious violent offense, assault in the second degree, assault of
8 a child in the second degree, any crime against a person where it is
9 determined in accordance with RCW 9.94A.125 that the defendant or an
10 accomplice was armed with a deadly weapon at the time of commission, or
11 any felony offense under chapter 69.50 or 69.52 RCW may become
12 eligible, in accordance with a program developed by the department, for
13 transfer to community custody status in lieu of earned early release
14 time pursuant to subsection (1) of this section;

15 (3) An offender may leave a correctional facility pursuant to an
16 authorized furlough or leave of absence. In addition, offenders may
17 leave a correctional facility when in the custody of a corrections
18 officer or officers;

19 (4) The governor, upon recommendation from the clemency and
20 pardons board, may grant an extraordinary release for reasons of
21 serious health problems, senility, advanced age, extraordinary
22 meritorious acts, or other extraordinary circumstances;

23 (5) No more than the final six months of the sentence may be
24 served in partial confinement designed to aid the offender in finding
25 work and reestablishing ((him)) himself or herself in the community;

26 (6) The governor may pardon any offender;

27 (7) The department of corrections may release an offender from
28 confinement any time within ten days before a release date calculated
29 under this section; and

30 (8) An offender may leave a correctional facility prior to
31 completion of his sentence if the sentence has been reduced as provided
32 in RCW 9.94A.160.

33 Notwithstanding any other provisions of this section, an offender
34 sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to
35 a mandatory minimum sentence of total confinement shall not be released
36 from total confinement before the completion of the listed mandatory
37 minimum sentence for that felony crime of conviction unless allowed
38 under RCW 9.94A.120(4).

1 **Sec. 7.** RCW 9A.36.045 and 1994 sp.s. c 7 s 511 are each amended
2 to read as follows:

3 RECKLESS ENDANGERMENT IN THE FIRST DEGREE. (1) A person is guilty
4 of reckless endangerment in the first degree when he or she recklessly
5 discharges a firearm as defined in RCW 9.41.010 in a manner which
6 creates a substantial risk of death or serious physical injury to
7 another person and the discharge is either from a motor vehicle or from
8 the immediate area of a motor vehicle that was used to transport the
9 shooter or the firearm, or both, to the scene of the discharge.

10 (2) A person who unlawfully discharges a firearm from a moving
11 motor vehicle may be inferred to have engaged in reckless conduct,
12 unless the discharge is shown by evidence satisfactory to the trier of
13 fact to have been made without such recklessness.

14 (3) Reckless endangerment in the first degree is a class B felony.

15 **Sec. 8.** RCW 9A.52.020 and 1975 1st ex.s. c 260 s 9A.52.020 are
16 each amended to read as follows:

17 BURGLARY IN THE FIRST DEGREE. (1) A person is guilty of burglary
18 in the first degree if, with intent to commit a crime against a person
19 or property therein, he or she enters or remains unlawfully in a
20 ~~((dwelling))~~ building and if, in entering or while in the ~~((dwelling))~~
21 building or in immediate flight therefrom, the actor or another
22 participant in the crime (a) is armed with a deadly weapon, or (b)
23 assaults any person therein.

24 (2) Burglary in the first degree is a class A felony.

25 **Sec. 9.** RCW 9A.56.300 and 1994 sp.s. c 7 s 432 are each amended
26 to read as follows:

27 THEFT OF A FIREARM. (1) A person is guilty of theft of a firearm
28 if ~~((the person:~~
29 ~~(a)))~~ he or she commits a theft of ((a)) any firearm~~((; or~~
30 ~~(b) Possesses, sells, or delivers a stolen firearm))~~.

31 (2) This section applies regardless of the ~~((stolen firearm's))~~
32 value of the firearm taken in the theft.

33 (3) ~~(("Possession, sale, or delivery of a stolen firearm" as used~~
34 ~~in this section has the same meaning as "possessing stolen property" in~~
35 ~~RCW 9A.56.140))~~ Each firearm taken in the theft under this section is
36 a separate offense.

1 (4) The definition of "theft" and the defense allowed against the
2 prosecution for theft under RCW 9A.56.020 shall apply to the crime of
3 theft of a firearm.

4 (5) As used in this section, "firearm" means any firearm as
5 defined in RCW 9.41.010.

6 (6) Theft of a firearm is a class ((C)) B felony.

7 **Sec. 10.** RCW 9A.56.030 and 1975 1st ex.s. c 260 s 9A.56.030 are
8 each amended to read as follows:

9 THEFT IN THE FIRST DEGREE OTHER THAN A FIREARM. (1) A person is
10 guilty of theft in the first degree if he or she commits theft of:

11 (a) Property or services which exceed(s) one thousand five hundred
12 dollars in value other than a firearm as defined in RCW 9.41.010; or

13 (b) Property of any value other than a firearm as defined in RCW
14 9.41.010 taken from the person of another.

15 (2) Theft in the first degree is a class B felony.

16 **Sec. 11.** RCW 9A.56.040 and 1994 sp.s. c 7 s 433 are each amended
17 to read as follows:

18 THEFT IN THE SECOND DEGREE OTHER THAN A FIREARM. (1) A person is
19 guilty of theft in the second degree if he or she commits theft of:

20 (a) Property or services which exceed(s) two hundred and fifty
21 dollars in value other than a firearm as defined in RCW 9.41.010, but
22 does not exceed one thousand five hundred dollars in value; or

23 (b) A public record, writing, or instrument kept, filed, or
24 deposited according to law with or in the keeping of any public office
25 or public servant; or

26 (c) An access device; or

27 (d) A motor vehicle, of a value less than one thousand five
28 hundred dollars.

29 (2) Theft in the second degree is a class C felony.

30 NEW SECTION. **Sec. 12.** A new section is added to chapter 9A.56
31 RCW to read as follows:

32 POSSESSING A STOLEN FIREARM. (1) A person is guilty of possessing
33 a stolen firearm if he or she possesses, carries, delivers, sells, or
34 is in control of a stolen firearm.

35 (2) This section applies regardless of the stolen firearm's value.

1 (3) Each stolen firearm possessed under this section is a separate
2 offense.

3 (4) The definition of "possessing stolen property" and the defense
4 allowed against the prosecution for possessing stolen property under
5 RCW 9A.56.140 shall apply to the crime of possessing a stolen firearm.

6 (5) As used in this section, "firearm" means any firearm as
7 defined in RCW 9.41.010.

8 (6) Possessing a stolen firearm is a class B felony.

9 **Sec. 13.** RCW 9A.56.150 and 1975 1st ex.s. c 260 s 9A.56.150 are
10 each amended to read as follows:

11 POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE OTHER THAN A
12 FIREARM. (1) A person is guilty of possessing stolen property in the
13 first degree if he or she possesses stolen property other than a
14 firearm as defined in RCW 9.41.010 which exceeds one thousand five
15 hundred dollars in value.

16 (2) Possessing stolen property in the first degree is a class B
17 felony.

18 **Sec. 14.** RCW 9A.56.160 and 1994 sp.s. c 7 s 434 are each amended
19 to read as follows:

20 POSSESSING STOLEN PROPERTY IN THE SECOND DEGREE OTHER THAN A
21 FIREARM. (1) A person is guilty of possessing stolen property in the
22 second degree if:

23 (a) He or she possesses stolen property other than a firearm as
24 defined in RCW 9.41.010 which exceeds two hundred fifty dollars in
25 value but does not exceed one thousand five hundred dollars in value;
26 or

27 (b) He or she possesses a stolen public record, writing or
28 instrument kept, filed, or deposited according to law; or

29 (c) He or she possesses a stolen access device; or

30 (d) He or she possesses a stolen motor vehicle of a value less
31 than one thousand five hundred dollars.

32 (2) Possessing stolen property in the second degree is a class C
33 felony.

34 **Sec. 15.** RCW 9.41.040 and 1994 sp.s. c 7 s 402 are each amended
35 to read as follows:

1 UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST AND SECOND DEGREE--
2 OWNERSHIP, POSSESSION OF FIREARMS PROHIBITED FROM CERTAIN PERSONS.

3 (1)(a) A person, whether an adult or juvenile, is guilty of the crime
4 of unlawful possession of a firearm in the first degree, if the person
5 owns, has in his or her possession, or has in his or her control any
6 firearm(

7 ~~(a))~~ after having previously been convicted in this state or
8 elsewhere of ~~((a))~~ any serious offense~~((, a domestic violence offense~~
9 ~~enumerated in RCW 10.99.020(2), a harassment offense enumerated in RCW~~
10 ~~9A.46.060, or of a felony in which a firearm was used or displayed))~~ as
11 defined in this chapter, residential burglary, reckless endangerment in
12 the first degree, any felony violation of the uniform controlled
13 substances act, chapter 69.50 RCW, classified as a class A or class B
14 felony, or with a maximum sentence of at least ten years, or both, or
15 equivalent statutes of another jurisdiction, except as otherwise
16 provided in subsection (3) or (4) of this section;

17 (b) A person, whether an adult or juvenile, is guilty of the crime
18 of unlawful possession of a firearm in the second degree, if the person
19 does not qualify under (a) of this subsection for the crime of unlawful
20 possession of a firearm in the first degree and the person owns, has in
21 his or her possession, or has in his or her control any firearm:

22 (i) After having previously been convicted of any remaining felony
23 violation of the uniform controlled substances act, chapter 69.50 RCW,
24 or equivalent statutes of another jurisdiction not specifically listed
25 as prohibiting firearm possession under (a) of this subsection, any
26 remaining felony in which a firearm was used or displayed and the
27 felony is not specifically listed as prohibiting firearm possession
28 under (a) of this subsection, except as otherwise provided in
29 subsection (3) or (4) of this section;

30 ~~((e))~~ (ii) After having been convicted within the previous three
31 years of any domestic violence offense enumerated in RCW 10.99.020(2)
32 committed on or after July 1, 1994, or the offense of harassment as
33 defined in RCW 9A.46.020 committed on or after July 1, 1994, except as
34 otherwise provided in subsection (3) or (4) of this section;

35 (iii) After having previously been convicted on three occasions
36 within five years of driving a motor vehicle or operating a vessel
37 while under the influence of intoxicating liquor or any drug, unless
38 his or her right to possess a firearm has been restored as provided in
39 RCW 9.41.047;

1 ~~((e))~~ (iv) After having previously been involuntarily committed
2 for mental health treatment under RCW 71.05.320, 71.34.090, chapter
3 10.77 RCW, or equivalent statutes of another jurisdiction, unless his
4 or her right to possess a firearm has been restored as provided in RCW
5 9.41.047; and/or

6 (v) If the person is under eighteen years of age, except as
7 provided in RCW 9.41.042.

8 (2)(a) Unlawful possession of a firearm in the first degree is a
9 class (C) B felony, punishable under chapter 9A.20 RCW.

10 (b) Unlawful possession of a firearm in the second degree is a
11 class C felony, punishable under chapter 9A.20 RCW.

12 (3) As used in this section, a person has been "convicted" at such
13 time as a plea of guilty has been accepted or a verdict of guilty has
14 been filed, notwithstanding the pendency of any future proceedings
15 including but not limited to sentencing or disposition, post-trial or
16 post-factfinding motions, and appeals. A person shall not be precluded
17 from possession of a firearm if the conviction has been the subject of
18 a pardon, annulment, certificate of rehabilitation, or other equivalent
19 procedure based on a finding of the rehabilitation of the person
20 convicted or the conviction or disposition has been the subject of a
21 pardon, annulment, or other equivalent procedure based on a finding of
22 innocence.

23 (4) Notwithstanding subsection (1) of this section, a person
24 convicted of an offense prohibiting the possession of a firearm under
25 this section other than murder, manslaughter, robbery, rape, indecent
26 liberties, arson, assault, kidnapping, extortion, burglary, or
27 violations with respect to controlled substances under RCW 69.50.401(a)
28 and 69.50.410, who received a probationary sentence under RCW 9.95.200,
29 and who received a dismissal of the charge under RCW 9.95.240, shall
30 not be precluded from possession of a firearm as a result of the
31 conviction. Notwithstanding any other provisions of this section, if
32 a person is prohibited from possession of a firearm under subsection
33 (1) of this section and has not previously been convicted of a sex
34 offense prohibiting firearm ownership under subsection (1) of this
35 section and/or any felony defined under any law as a class A felony or
36 with a maximum sentence of at least twenty years, or both, the
37 individual may petition a court of record to have his or her right to
38 possess a firearm restored:

39 (a) Under RCW 9.41.047; and/or

1 (b) After five or more consecutive years in the community without
2 being convicted or currently charged with any felony, gross
3 misdemeanor, or misdemeanor crimes, if the individual has no prior
4 felony convictions that prohibit the possession of a firearm counted as
5 part of the offender score under RCW 9.94A.360.

6 ~~((6)(a) A person who has been committed by court order for~~
7 ~~treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW,~~
8 ~~or equivalent statutes of another jurisdiction, may not possess, in any~~
9 ~~manner, a firearm as defined in RCW 9.41.010.~~

10 ~~(b) At the time of commitment, the court shall specifically state~~
11 ~~to the person under (a) of this subsection and give the person notice~~
12 ~~in writing that the person is barred from possession of firearms.~~

13 ~~(c) The secretary of social and health services shall develop~~
14 ~~appropriate rules to create an approval process under this subsection.~~
15 ~~The rules must provide for the immediate restoration of the right to~~
16 ~~possess a firearm upon a showing in a court of competent jurisdiction~~
17 ~~that a person no longer is required to participate in an inpatient or~~
18 ~~outpatient treatment program, and is no longer required to take~~
19 ~~medication to treat any condition related to the commitment. Unlawful~~
20 ~~possession of a firearm under this subsection shall be punished as a~~
21 ~~class C felony under chapter 9A.20 RCW.))~~

22 (5) In addition to any other penalty provided for by law, if a
23 person under the age of eighteen years is found by a court to have
24 possessed a firearm in a vehicle in violation of subsection (1) of this
25 section or to have committed an offense while armed with a firearm
26 during which offense a motor vehicle served an integral function, the
27 court shall notify the department of licensing within twenty-four hours
28 and the person's privilege to drive shall be revoked under RCW
29 46.20.265.

30 (6) Nothing in chapter . . . , Laws of 1995 (this act) shall ever
31 be construed or interpreted as preventing an offender from being
32 charged and subsequently convicted for the separate felony crimes of
33 theft of a firearm or possession of a stolen firearm, or both, in
34 addition to being charged and subsequently convicted under this section
35 for unlawful possession of a firearm in the first or second degree.
36 Notwithstanding any other law, if the offender is convicted under this
37 section for unlawful possession of a firearm in the first or second
38 degree and for the felony crimes of theft of a firearm or possession of
39 a stolen firearm, or both, then the offender shall serve consecutive

1 sentences for each of the felony crimes of conviction listed in this
2 subsection.

3 (7) Each firearm unlawfully possessed under this section shall be
4 a separate offense.

5 **Sec. 16.** RCW 10.95.020 and 1994 c 121 s 3 are each amended to
6 read as follows:

7 DEATH PENALTY AUTHORIZED FOR DRIVE-BY SHOOTERS, MURDERS FOR GROUP
8 MEMBERSHIP, AND RESIDENTIAL BURGLARS WHO KILL. A person is guilty of
9 aggravated first degree murder if he or she commits first degree murder
10 as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one
11 or more of the following aggravating circumstances exist:

12 (1) The victim was a law enforcement officer, corrections officer,
13 or fire fighter who was performing his or her official duties at the
14 time of the act resulting in death and the victim was known or
15 reasonably should have been known by the person to be such at the time
16 of the killing;

17 (2) At the time of the act resulting in the death, the person was
18 serving a term of imprisonment, had escaped, or was on authorized or
19 unauthorized leave in or from a state facility or program for the
20 incarceration or treatment of persons adjudicated guilty of crimes;

21 (3) At the time of the act resulting in death, the person was in
22 custody in a county or county-city jail as a consequence of having been
23 adjudicated guilty of a felony;

24 (4) The person committed the murder pursuant to an agreement that
25 he or she would receive money or any other thing of value for
26 committing the murder;

27 (5) The person solicited another person to commit the murder and
28 had paid or had agreed to pay money or any other thing of value for
29 committing the murder;

30 (6) The person committed the murder to obtain or maintain his or
31 her membership or to advance his or her position in the hierarchy of an
32 organization, association, or identifiable group;

33 (7) The victim was:

34 (a) A judge; juror or former juror; prospective, current, or
35 former witness in an adjudicative proceeding; prosecuting attorney;
36 deputy prosecuting attorney; defense attorney; a member of the
37 indeterminate sentence review board; or a probation or parole officer;
38 and

1 (b) The murder was related to the exercise of official duties
2 performed or to be performed by the victim;

3 ~~((+7))~~ (8) The person committed the murder to conceal the
4 commission of a crime or to protect or conceal the identity of any
5 person committing a crime, including, but specifically not limited to,
6 any attempt to avoid prosecution as a persistent offender as defined in
7 RCW 9.94A.030;

8 ~~((+8))~~ (9) There was more than one victim and the murders were
9 part of a common scheme or plan or the result of a single act of the
10 person;

11 ~~((+9))~~ (10) The murder was committed in the course of, in
12 furtherance of, or in immediate flight from one of the following
13 crimes:

14 (a) Robbery in the first or second degree;

15 (b) Rape in the first or second degree;

16 (c) Burglary in the first or second degree or residential
17 burglary;

18 (d) Kidnapping in the first degree; or

19 (e) Arson in the first degree;

20 ~~((+10))~~ (11) The victim was regularly employed or self-employed
21 as a newsreporter and the murder was committed to obstruct or hinder
22 the investigative, research, or reporting activities of the victim.

23 NEW SECTION. Sec. 17. OFFENDER NOTIFICATION AND WARNING. Any
24 and all law enforcement agencies and personnel, criminal justice
25 attorneys, sentencing judges, and state and local correctional
26 facilities and personnel may, but are not required to, give any and all
27 offenders either written or oral notice, or both, of the sanctions
28 imposed and criminal justice changes regarding armed offenders,
29 including but not limited to the subjects of:

30 (1) Felony crimes involving any deadly weapon special verdict
31 under RCW 9.94A.125;

32 (2) Any and all deadly weapon enhancements under RCW 9.94A.310 (3)
33 or (4), or both, as well as any federal firearm, ammunition, or other
34 deadly weapon enhancements;

35 (3) Any and all felony crimes requiring the possession, display,
36 or use of any deadly weapon as well as the many increased penalties for
37 these crimes including the creation of theft of a firearm and
38 possessing a stolen firearm;

1 (4) New prosecuting standards established for filing charges for
2 all crimes involving any deadly weapons;

3 (5) Removal of good time for any and all deadly weapon
4 enhancements; and

5 (6) Providing the death penalty for those who commit first degree
6 murder: (a) To join, maintain, or advance membership in an
7 identifiable group; (b) as part of a drive-by shooting; or (c) to avoid
8 prosecution as a persistent offender as defined in RCW 9.94A.030.

9 NEW SECTION. **Sec. 18.** CODIFICATION. Sections 4 and 5 of this act
10 are each added to chapter 9.94A RCW.

11 NEW SECTION. **Sec. 19.** SHORT TITLE. This act shall be known and
12 cited as the hard time for armed crime act.

13 NEW SECTION. **Sec. 20.** SEVERABILITY. If any provision of this
14 act or its application to any person or circumstance is held invalid,
15 the remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 21.** CAPTIONS. Captions as used in this act do
18 not constitute any part of the law.

19 NEW SECTION. **Sec. 22.** This act shall constitute the alternative
20 to Initiative 159, which has been proposed to the legislature. The
21 secretary of state is directed to place this act on the ballot in
22 conjunction with Initiative 159, pursuant to Article II, section 1(a)
23 of the state Constitution.

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