
HOUSE BILL 2699

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By Representatives O'Brien, Pearson, Ericks, Rodne, Nixon, Kilmer, Green, Sells, McDonald, P. Sullivan, McCoy, Simpson, Moeller, Morrell, Lantz, Hudgins, Linville and McCune; by request of Attorney General

Read first time 01/12/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to crimes committed with sexual motivation;
2 amending RCW 9.94A.533 and 9.94A.835; prescribing penalties; and
3 providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.533 and 2003 c 53 s 58 are each amended to read
6 as follows:

7 (1) The provisions of this section apply to the standard sentence
8 ranges determined by RCW 9.94A.510 or 9.94A.517.

9 (2) For persons convicted of the anticipatory offenses of criminal
10 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
11 standard sentence range is determined by locating the sentencing grid
12 sentence range defined by the appropriate offender score and the
13 seriousness level of the completed crime, and multiplying the range by
14 seventy-five percent.

15 (3) The following additional times shall be added to the standard
16 sentence range for felony crimes committed after July 23, 1995, if the
17 offender or an accomplice was armed with a firearm as defined in RCW
18 9.41.010 and the offender is being sentenced for one of the crimes
19 listed in this subsection as eligible for any firearm enhancements

1 based on the classification of the completed felony crime. If the
2 offender is being sentenced for more than one offense, the firearm
3 enhancement or enhancements must be added to the total period of
4 confinement for all offenses, regardless of which underlying offense is
5 subject to a firearm enhancement. If the offender or an accomplice was
6 armed with a firearm as defined in RCW 9.41.010 and the offender is
7 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
8 commit one of the crimes listed in this subsection as eligible for any
9 firearm enhancements, the following additional times shall be added to
10 the standard sentence range determined under subsection (2) of this
11 section based on the felony crime of conviction as classified under RCW
12 9A.28.020:

13 (a) Five years for any felony defined under any law as a class A
14 felony or with a statutory maximum sentence of at least twenty years,
15 or both, and not covered under (f) of this subsection;

16 (b) Three years for any felony defined under any law as a class B
17 felony or with a statutory maximum sentence of ten years, or both, and
18 not covered under (f) of this subsection;

19 (c) Eighteen months for any felony defined under any law as a class
20 C felony or with a statutory maximum sentence of five years, or both,
21 and not covered under (f) of this subsection;

22 (d) If the offender is being sentenced for any firearm enhancements
23 under (a), (b), and/or (c) of this subsection and the offender has
24 previously been sentenced for any deadly weapon enhancements after July
25 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
26 (4)(a), (b), and/or (c) of this section, or both, all firearm
27 enhancements under this subsection shall be twice the amount of the
28 enhancement listed;

29 (e) Notwithstanding any other provision of law, all firearm
30 enhancements under this section are mandatory, shall be served in total
31 confinement, and shall run consecutively to all other sentencing
32 provisions, including other firearm or deadly weapon enhancements, for
33 all offenses sentenced under this chapter. However, whether or not a
34 mandatory minimum term has expired, an offender serving a sentence
35 under this subsection may be granted an extraordinary medical placement
36 when authorized under RCW 9.94A.728(4);

37 (f) The firearm enhancements in this section shall apply to all
38 felony crimes except the following: Possession of a machine gun,

1 possessing a stolen firearm, drive-by shooting, theft of a firearm,
2 unlawful possession of a firearm in the first and second degree, and
3 use of a machine gun in a felony;

4 (g) If the standard sentence range under this section exceeds the
5 statutory maximum sentence for the offense, the statutory maximum
6 sentence shall be the presumptive sentence unless the offender is a
7 persistent offender. If the addition of a firearm enhancement
8 increases the sentence so that it would exceed the statutory maximum
9 for the offense, the portion of the sentence representing the
10 enhancement may not be reduced.

11 (4) The following additional times shall be added to the standard
12 sentence range for felony crimes committed after July 23, 1995, if the
13 offender or an accomplice was armed with a deadly weapon other than a
14 firearm as defined in RCW 9.41.010 and the offender is being sentenced
15 for one of the crimes listed in this subsection as eligible for any
16 deadly weapon enhancements based on the classification of the completed
17 felony crime. If the offender is being sentenced for more than one
18 offense, the deadly weapon enhancement or enhancements must be added to
19 the total period of confinement for all offenses, regardless of which
20 underlying offense is subject to a deadly weapon enhancement. If the
21 offender or an accomplice was armed with a deadly weapon other than a
22 firearm as defined in RCW 9.41.010 and the offender is being sentenced
23 for an anticipatory offense under chapter 9A.28 RCW to commit one of
24 the crimes listed in this subsection as eligible for any deadly weapon
25 enhancements, the following additional times shall be added to the
26 standard sentence range determined under subsection (2) of this section
27 based on the felony crime of conviction as classified under RCW
28 9A.28.020:

29 (a) Two years for any felony defined under any law as a class A
30 felony or with a statutory maximum sentence of at least twenty years,
31 or both, and not covered under (f) of this subsection;

32 (b) One year for any felony defined under any law as a class B
33 felony or with a statutory maximum sentence of ten years, or both, and
34 not covered under (f) of this subsection;

35 (c) Six months for any felony defined under any law as a class C
36 felony or with a statutory maximum sentence of five years, or both, and
37 not covered under (f) of this subsection;

1 (d) If the offender is being sentenced under (a), (b), and/or (c)
2 of this subsection for any deadly weapon enhancements and the offender
3 has previously been sentenced for any deadly weapon enhancements after
4 July 23, 1995, under (a), (b), and/or (c) of this subsection or
5 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
6 weapon enhancements under this subsection shall be twice the amount of
7 the enhancement listed;

8 (e) Notwithstanding any other provision of law, all deadly weapon
9 enhancements under this section are mandatory, shall be served in total
10 confinement, and shall run consecutively to all other sentencing
11 provisions, including other firearm or deadly weapon enhancements, for
12 all offenses sentenced under this chapter. However, whether or not a
13 mandatory minimum term has expired, an offender serving a sentence
14 under this subsection may be granted an extraordinary medical placement
15 when authorized under RCW 9.94A.728(4);

16 (f) The deadly weapon enhancements in this section shall apply to
17 all felony crimes except the following: Possession of a machine gun,
18 possessing a stolen firearm, drive-by shooting, theft of a firearm,
19 unlawful possession of a firearm in the first and second degree, and
20 use of a machine gun in a felony;

21 (g) If the standard sentence range under this section exceeds the
22 statutory maximum sentence for the offense, the statutory maximum
23 sentence shall be the presumptive sentence unless the offender is a
24 persistent offender. If the addition of a deadly weapon enhancement
25 increases the sentence so that it would exceed the statutory maximum
26 for the offense, the portion of the sentence representing the
27 enhancement may not be reduced.

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

- 1 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
2 (a) or (b) or 69.50.410;
3 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
4 (c), (d), or (e);
5 (c) Twelve months for offenses committed under RCW 69.50.4013.

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

9 (6) An additional twenty-four months shall be added to the standard
10 sentence range for any ranked offense involving a violation of chapter
11 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
12 9.94A.605.

13 (7) An additional two years shall be added to the standard sentence
14 range for vehicular homicide committed while under the influence of
15 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
16 prior offense as defined in RCW 46.61.5055.

17 (8)(a) The following additional times shall be added to the
18 standard sentence range for felony crimes committed on or after the
19 effective date of this section, if the offense was committed with
20 sexual motivation, as that term is defined in RCW 9.94A.030. If the
21 offender is being sentenced for more than one offense, the sexual
22 motivation enhancement must be added to the total period of total
23 confinement for all offenses, regardless of which underlying offense is
24 subject to a sexual motivation enhancement. If the offender committed
25 the offense with sexual motivation and the offender is being sentenced
26 for an anticipatory offense under chapter 9A.28 RCW, the following
27 additional times shall be added to the standard sentence range
28 determined under subsection (2) of this section based on the felony
29 crime of conviction as classified under RCW 9A.28.020:

30 (i) Two years for any felony defined under the law as a class A
31 felony or with a statutory maximum sentence of at least twenty years,
32 or both;

33 (ii) Eighteen months for any felony defined under any law as a
34 class B felony or with a statutory maximum sentence of ten years, or
35 both;

36 (iii) One year for any felony defined under any law as a class C
37 felony or with a statutory maximum sentence of five years, or both;

1 (iv) If the offender is being sentenced for any sexual motivation
2 enhancements under (i), (ii), and/or (iii) of this subsection and the
3 offender has previously been sentenced for any sexual motivation
4 enhancements on or after the effective date of this section, under (i),
5 (ii), and/or (iii) of this subsection, all sexual motivation
6 enhancements under this subsection shall be twice the amount of the
7 enhancement listed;

8 (b) Notwithstanding any other provision of law, all sexual
9 motivation enhancements under this subsection are mandatory, shall be
10 served in total confinement, and shall run consecutively to all other
11 sentencing provisions, including other sexual motivation enhancements,
12 for all offenses sentenced under this chapter. However, whether or not
13 a mandatory minimum term has expired, an offender serving a sentence
14 under this subsection may be granted an extraordinary medical placement
15 when authorized under RCW 9.94A.728(4);

16 (c) The sexual motivation enhancements in this subsection apply to
17 all felony crimes;

18 (d) If the standard sentence range under this subsection exceeds
19 the statutory maximum sentence for the offense, the statutory maximum
20 sentence shall be the presumptive sentence unless the offender is a
21 persistent offender. If the addition of a sexual motivation
22 enhancement increases the sentence so that it would exceed the
23 statutory maximum for the offense, the portion of the sentence
24 representing the enhancement may not be reduced;

25 (e) The additional term of confinement authorized by this
26 subsection shall not be imposed if the court finds the offender is
27 eligible for a special sex offender sentencing alternative pursuant to
28 RCW 9.94A.670 and the court imposes the alternative. However, if the
29 court subsequently revokes the suspended sentence pursuant to RCW
30 9.94A.670(10), the court shall impose the additional term of
31 confinement authorized by this subsection. If the court does so, the
32 offender may receive credit for any confinement time served during the
33 period of community custody, but that credit may not be used to reduce
34 the total confinement sentence the offender is required to serve
35 pursuant to this subsection;

36 (f) The portion of the total confinement sentence which the
37 offender must serve under this subsection shall be calculated before
38 any earned early release time is credited to the offender.

1 **Sec. 2.** RCW 9.94A.835 and 1999 c 143 s 11 are each amended to read
2 as follows:

3 (1) The prosecuting attorney shall file a special allegation of
4 sexual motivation in every criminal case, felony, gross misdemeanor, or
5 misdemeanor, other than sex offenses as defined in RCW
6 9.94A.030(~~(+33+)~~) (38) (a) or (c) when sufficient admissible evidence
7 exists, which, when considered with the most plausible, reasonably
8 foreseeable defense that could be raised under the evidence, would
9 justify a finding of sexual motivation by a reasonable and objective
10 fact-finder.

11 (2) In a criminal case wherein there has been a special allegation
12 the state shall prove beyond a reasonable doubt that the accused
13 committed the crime with a sexual motivation. The court shall make a
14 finding of fact of whether or not a sexual motivation was present at
15 the time of the commission of the crime, or if a jury trial is had, the
16 jury shall, if it finds the defendant guilty, also find a special
17 verdict as to whether or not the defendant committed the crime with a
18 sexual motivation. This finding shall not be applied to sex offenses
19 as defined in RCW 9.94A.030(~~(+33+)~~) (38) (a) or (c).

20 (3) The prosecuting attorney shall not withdraw the special
21 allegation of sexual motivation without approval of the court through
22 an order of dismissal of the special allegation. The court shall not
23 dismiss this special allegation unless it finds that such an order is
24 necessary to correct an error in the initial charging decision or
25 unless there are evidentiary problems which make proving the special
26 allegation doubtful.

27 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2006.

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