

SHB 1251 - H AMD TO H AMD (H2957.1) **234**
By Representative Warnick

ADOPTED 3/10/2007

1 On page 8, after line 9 of the amendment, insert the following:

2 "NEW SECTION. **Sec. 10.** A new section is added to chapter
3 9.94A RCW to read as follows:

4 (1) In a prosecution for theft in the first or second degree,
5 the prosecution may file a special allegation of disproportionate
6 impact when sufficient admissible evidence exists, which, when
7 considered with the most plausible, reasonably foreseeable defense
8 that could be raised under the evidence, would justify a finding by
9 a reasonable and objective fact-finder that the damage to the
10 victim greatly exceeds the value of the stolen property.

11 (2) Once a special allegation has been made under this section,
12 the state has the burden to prove beyond a reasonable doubt that
13 the damage to the victim greatly exceeds the value of the stolen
14 property. If a jury is had, the jury shall, if it finds the
15 defendant guilty, also find a special verdict as to whether the
16 damage to the victim greatly exceeds the value of the stolen
17 property. If no jury is had, the court shall make a finding of
18 fact as to whether the damage to the victim greatly exceeds the
19 value of the stolen property.

20 (3) For the purposes of this section, damage to the victim
21 greatly exceeds the value of the stolen property when the
22 replacement cost of the stolen item is more than three times the
23 value of the stolen item, or the theft of the item creates a public
24 hazard.

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 9.94A
26 RCW to read as follows:

27 (1) In a prosecution for possessing stolen property in the
28 first or second degree, the prosecution may file a special
29 allegation of disproportionate impact when sufficient admissible

1 evidence exists, which, when considered with the most plausible,
2 reasonably foreseeable defense that could be raised under the
3 evidence, would justify a finding by a reasonable and objective
4 fact-finder that the damage to the victim from whom the property
5 was stolen greatly exceeds the value of the stolen property.

6 (2) Once a special allegation has been made under this section,
7 the state has the burden to prove beyond a reasonable doubt that
8 the damage to the victim from whom the property was stolen greatly
9 exceeds the value of the stolen property. If a jury is had, the
10 jury shall, if it finds the defendant guilty, also find a special
11 verdict as to whether the damage to the victim from whom the
12 property was stolen greatly exceeds the value of the stolen
13 property. If no jury is had, the court shall make a finding of
14 fact as to whether the damage to the victim from whom the property
15 was stolen greatly exceeds the value of the stolen property.

16 (3) For the purposes of this section, damage to the victim from
17 whom the property was stolen greatly exceeds the value of the
18 stolen property when the replacement cost of the stolen item is
19 more than three times the value of the stolen item, or the theft of
20 the item creates a public hazard.

21 **Sec. 12.** RCW 9.94A.533 and 2006 c 339 s 301 and 2006 c 123 s
22 1 are each reenacted and amended to read as follows:

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

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

31 (3) The following additional times shall be added to the
32 standard sentence range for felony crimes committed after July 23,
33 1995, if the offender or an accomplice was armed with a firearm as
34 defined in RCW 9.41.010 and the offender is being sentenced for one
35 of the crimes listed in this subsection as eligible for any firearm
36 enhancements based on the classification of the completed felony
37 crime. If the offender is being sentenced for more than one
38 offense, the firearm enhancement or enhancements must be added to

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

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

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

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

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

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

36 (f) The firearm enhancements in this section shall apply to all
37 felony crimes except the following: Possession of a machine gun,
38 possessing a stolen firearm, drive-by shooting, theft of a firearm,

1 unlawful possession of a firearm in the first and second degree,
2 and use of a machine gun in a felony;

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

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

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

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

38 (d) If the offender is being sentenced under (a), (b), and/or
39 (c) of this subsection for any deadly weapon enhancements and the

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

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

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

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

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

38 (a) Eighteen months for offenses committed under RCW
39 69.50.401(2) (a) or (b) or 69.50.410;

1 (b) Fifteen months for offenses committed under RCW
2 69.50.401(2) (c), (d), or (e);

3 (c) Twelve months for offenses committed under RCW 69.50.4013.

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

7 (6) An additional twenty-four months shall be added to the
8 standard sentence range for any ranked offense involving a
9 violation of chapter 69.50 RCW if the offense was also a violation
10 of RCW 69.50.435 or 9.94A.605. All enhancements under this
11 subsection shall run consecutively to all other sentencing
12 provisions, for all offenses sentenced under this chapter.

13 (7) An additional two years shall be added to the standard
14 sentence range for vehicular homicide committed while under the
15 influence of intoxicating liquor or any drug as defined by RCW
16 46.61.502 for each 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
19 July 1, 2006, if the offense was committed with sexual motivation,
20 as that term is defined in RCW 9.94A.030. If the offender is being
21 sentenced for more than one offense, the sexual motivation
22 enhancement must be added to the total period of total confinement
23 for all offenses, regardless of which underlying offense is subject
24 to a sexual motivation enhancement. If the offender committed the
25 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
31 A felony or with a statutory maximum sentence of at least twenty
32 years, 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,
35 or both;

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

1 (iv) If the offender is being sentenced for any sexual
2 motivation enhancements under (i), (ii), and/or (iii) of this
3 subsection and the offender has previously been sentenced for any
4 sexual motivation enhancements on or after July 1, 2006, 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
10 be served in total confinement, and shall run consecutively to all
11 other sentencing provisions, including other sexual motivation
12 enhancements, for all offenses sentenced under this chapter.
13 However, whether or not a mandatory minimum term has expired, an
14 offender serving a sentence under this subsection may be granted an
15 extraordinary medical placement when authorized under RCW
16 9.94A.728(4);

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

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

26 (e) The portion of the total confinement sentence which the
27 offender must serve under this subsection shall be calculated
28 before any earned early release time is credited to the offender;

29 (f) Nothing in this subsection prevents a sentencing court from
30 imposing a sentence outside the standard sentence range pursuant to
31 RCW 9.94A.535.

32 (9) An additional twelve months and one day shall be added to
33 the standard sentence range for theft in the first or second degree
34 when there has been a special verdict or finding that the damage to
35 the victim greatly exceeds the value of the stolen property under
36 section 9 of this act.

37 (10) An additional twelve months and one day shall be added to
38 the standard sentence range for possessing stolen property in the
39 first or second degree when there has been a special verdict or

1 finding that the damage to the victim from whom the property was
2 stolen greatly exceeds the value of the stolen property under
3 section 10 of this act."

4 Renumber the remaining sections consecutively, and correct any
5 internal references accordingly.

EFFECT: Adds provisions related to theft in the first and second degree and possessing stolen property in the first and second degree.

Allows the prosecution, in a prosecution for theft or possessing stolen property in the first and second degree, to file a special allegation of disproportionate impact when sufficient evidence exists that the damage to the victim greatly exceeds the value of the stolen property. Provides that damage to the victim greatly exceeds the value of the stolen property when the replacement cost of the stolen item is more than three times the value of the stolen item, or the theft of the item creates a public hazard. Provides that the prosecutor has the burden of proving the special allegation beyond a reasonable doubt to the jury (or to the judge, if there is no jury). Provides that, if the special allegation is proved, an additional 12 months and one day will be added to the standard sentence range for the offense.