

**ESSB 5312** - H AMD TO PSEP COMM AMD (H3210.1) **537**  
By Representative Armstrong

**ADOPTED 4/4/2007**

1 On page 8, after line 6 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 under section 10  
35 of this act that the damage to the victim greatly exceeds the value  
36 of the stolen property.

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 under section 11 of this act that the damage to the victim  
2 from whom the property was stolen greatly exceeds the value of the  
3 stolen property."

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

6 Correct the title.

**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.