
HOUSE BILL 2402

State of Washington 60th Legislature 2007 Regular Session

By Representatives Kelley and Morrell

Read first time 04/06/2007. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to enhancing the penalties for crimes against
2 victims whose immediate family member has died; reenacting and amending
3 RCW 9.94A.533; adding a new section to chapter 9.94A RCW; and
4 prescribing penalties.

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

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

8 (1) In a prosecution for theft in the first degree, theft in the
9 second degree, forgery, identity theft in the first degree, identity
10 theft in the second degree, or criminal impersonation in the first
11 degree, the prosecution may file a special allegation that an immediate
12 relative of the victim died within six months prior to the commission
13 of the crime.

14 (2) The state has the burden of proving a special allegation made
15 under this section beyond a reasonable doubt. If a jury is had, the
16 jury shall, if it finds the defendant guilty, also find a special
17 verdict as to whether an immediate relative of the victim died within
18 six months prior to the commission of the crime. If no jury is had,

1 the court shall make a finding of fact as to whether an immediate
2 relative of the victim died within six months prior to the commission
3 of the crime.

4 (3) For purposes of this section, "immediate relative of the
5 victim" means the victim's spouse, biological or adopted child, parent,
6 or sibling.

7 **Sec. 2.** RCW 9.94A.533 and 2006 c 339 s 301 and 2006 c 123 s 1 are
8 each reenacted and amended to read as follows:

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

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

17 (3) The following additional times shall be added to the standard
18 sentence range for felony crimes committed after July 23, 1995, if the
19 offender or an accomplice was armed with a firearm as defined in RCW
20 9.41.010 and the offender is being sentenced for one of the crimes
21 listed in this subsection as eligible for any firearm enhancements
22 based on the classification of the completed felony crime. If the
23 offender is being sentenced for more than one offense, the firearm
24 enhancement or enhancements must be added to the total period of
25 confinement for all offenses, regardless of which underlying offense is
26 subject to a firearm enhancement. If the offender or an accomplice was
27 armed with a firearm as defined in RCW 9.41.010 and the offender is
28 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
29 commit one of the crimes listed in this subsection as eligible for any
30 firearm enhancements, the following additional times shall be added to
31 the standard sentence range determined under subsection (2) of this
32 section based on the felony crime of conviction as classified under RCW
33 9A.28.020:

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

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

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

7 (d) If the offender is being sentenced for any firearm enhancements
8 under (a), (b), and/or (c) of this subsection and the offender has
9 previously been sentenced for any deadly weapon enhancements after July
10 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
11 (4)(a), (b), and/or (c) of this section, or both, all firearm
12 enhancements under this subsection shall be twice the amount of the
13 enhancement listed;

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

22 (f) The firearm enhancements in this section shall apply to all
23 felony crimes except the following: Possession of a machine gun,
24 possessing a stolen firearm, drive-by shooting, theft of a firearm,
25 unlawful possession of a firearm in the first and second degree, and
26 use of a machine gun in a felony;

27 (g) If the standard sentence range under this section exceeds the
28 statutory maximum sentence for the offense, the statutory maximum
29 sentence shall be the presumptive sentence unless the offender is a
30 persistent offender. If the addition of a firearm enhancement
31 increases the sentence so that it would exceed the statutory maximum
32 for the offense, the portion of the sentence representing the
33 enhancement may not be reduced.

34 (4) The following additional times shall be added to the standard
35 sentence range for felony crimes committed after July 23, 1995, if the
36 offender or an accomplice was armed with a deadly weapon other than a
37 firearm as defined in RCW 9.41.010 and the offender is being sentenced
38 for one of the crimes listed in this subsection as eligible for any

1 deadly weapon enhancements based on the classification of the completed
2 felony crime. If the offender is being sentenced for more than one
3 offense, the deadly weapon enhancement or enhancements must be added to
4 the total period of confinement for all offenses, regardless of which
5 underlying offense is subject to a deadly weapon enhancement. If the
6 offender or an accomplice was armed with a deadly weapon other than a
7 firearm as defined in RCW 9.41.010 and the offender is being sentenced
8 for an anticipatory offense under chapter 9A.28 RCW to commit one of
9 the crimes listed in this subsection as eligible for any deadly weapon
10 enhancements, the following additional times shall be added to the
11 standard sentence range determined under subsection (2) of this section
12 based on the felony crime of conviction as classified under RCW
13 9A.28.020:

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

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

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

23 (d) If the offender is being sentenced under (a), (b), and/or (c)
24 of this subsection for any deadly weapon enhancements and the offender
25 has previously been sentenced for any deadly weapon enhancements after
26 July 23, 1995, under (a), (b), and/or (c) of this subsection or
27 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
28 weapon enhancements under this subsection shall be twice the amount of
29 the enhancement listed;

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

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

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

13 (5) The following additional times shall be added to the standard
14 sentence range if the offender or an accomplice committed the offense
15 while in a county jail or state correctional facility and the offender
16 is being sentenced for one of the crimes listed in this subsection. If
17 the offender or an accomplice committed one of the crimes listed in
18 this subsection while in a county jail or state correctional facility,
19 and the offender is being sentenced for an anticipatory offense under
20 chapter 9A.28 RCW to commit one of the crimes listed in this
21 subsection, the following additional times shall be added to the
22 standard sentence range determined under subsection (2) of this
23 section:

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

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

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

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

32 (6) An additional twenty-four months shall be added to the standard
33 sentence range for any ranked offense involving a violation of chapter
34 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
35 9.94A.605. All enhancements under this subsection shall run
36 consecutively to all other sentencing provisions, for all offenses
37 sentenced under this chapter.

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

5 (8)(a) The following additional times shall be added to the
6 standard sentence range for felony crimes committed on or after July 1,
7 2006, if the offense was committed with sexual motivation, as that term
8 is defined in RCW 9.94A.030. If the offender is being sentenced for
9 more than one offense, the sexual motivation enhancement must be added
10 to the total period of total confinement for all offenses, regardless
11 of which underlying offense is subject to a sexual motivation
12 enhancement. If the offender committed the offense with sexual
13 motivation and the offender is being sentenced for an anticipatory
14 offense under chapter 9A.28 RCW, the following additional times shall
15 be added to the standard sentence range determined under subsection (2)
16 of this section based on the felony crime of conviction as classified
17 under RCW 9A.28.020:

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

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

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

26 (iv) If the offender is being sentenced for any sexual motivation
27 enhancements under (i), (ii), and/or (iii) of this subsection and the
28 offender has previously been sentenced for any sexual motivation
29 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
30 this subsection, all sexual motivation enhancements under this
31 subsection shall be twice the amount of the enhancement listed;

32 (b) Notwithstanding any other provision of law, all sexual
33 motivation enhancements under this subsection are mandatory, shall be
34 served in total confinement, and shall run consecutively to all other
35 sentencing provisions, including other sexual motivation enhancements,
36 for all offenses sentenced under this chapter. However, whether or not
37 a mandatory minimum term has expired, an offender serving a sentence

1 under this subsection may be granted an extraordinary medical placement
2 when authorized under RCW 9.94A.728(4);

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

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

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

15 (f) Nothing in this subsection prevents a sentencing court from
16 imposing a sentence outside the standard sentence range pursuant to RCW
17 9.94A.535.

18 (9) An additional twelve months shall be added to the standard
19 sentence range for theft in the first degree, theft in the second
20 degree, forgery, identity theft in the first degree, identity theft in
21 the second degree, or criminal impersonation in the first degree, if
22 there has been a special verdict or finding that an immediate relative
23 of the victim died within six months prior to the commission of the
24 crime under section 1 of this act.

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