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**SUBSTITUTE HOUSE BILL 2705**

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**State of Washington                      60th Legislature                      2008 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Lantz, Goodman, O'Brien, Rodne, Williams, Kirby, Sells, Hurst, Loomis, Simpson, VanDeWege, Ericks, and Kelley)

READ FIRST TIME 02/04/08.

1            AN ACT Relating to the sentencing enhancement for vehicular  
2 homicide; amending RCW 9.94A.533 and 9.94A.728; and creating a new  
3 section.

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

5            **Sec. 1.** RCW 9.94A.533 and 2007 c 368 s 9 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. All enhancements under this subsection shall run  
13 consecutively to all other sentencing provisions, for all offenses  
14 sentenced under this chapter.

15 (7) An additional two years shall be added to the standard sentence  
16 range for vehicular homicide committed while under the influence of  
17 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
18 prior offense as defined in RCW 46.61.5055. This enhancement is  
19 mandatory, shall be served in total confinement, and shall run  
20 consecutively to all other sentencing provisions, including other  
21 enhancements, for all offenses sentenced under this chapter. However,  
22 whether or not a mandatory minimum term has expired, an offender  
23 serving a sentence under this subsection may be granted an  
24 extraordinary medical placement when authorized under RCW 9.94A.728(4).

25 (8)(a) The following additional times shall be added to the  
26 standard sentence range for felony crimes committed on or after July 1,  
27 2006, if the offense was committed with sexual motivation, as that term  
28 is defined in RCW 9.94A.030. If the offender is being sentenced for  
29 more than one offense, the sexual motivation enhancement must be added  
30 to the total period of total confinement for all offenses, regardless  
31 of which underlying offense is subject to a sexual motivation  
32 enhancement. If the offender committed the offense with sexual  
33 motivation and the offender is being sentenced for an anticipatory  
34 offense under chapter 9A.28 RCW, the following additional times shall  
35 be added to the standard sentence range determined under subsection (2)  
36 of this section based on the felony crime of conviction as classified  
37 under RCW 9A.28.020:

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

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

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

9 (iv) If the offender is being sentenced for any sexual motivation  
10 enhancements under (i), (ii), and/or (iii) of this subsection and the  
11 offender has previously been sentenced for any sexual motivation  
12 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of  
13 this subsection, all sexual motivation enhancements under this  
14 subsection shall be twice the amount of the enhancement listed;

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

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

25 (d) If the standard sentence range under this subsection exceeds  
26 the statutory maximum sentence for the offense, the statutory maximum  
27 sentence shall be the presumptive sentence unless the offender is a  
28 persistent offender. If the addition of a sexual motivation  
29 enhancement increases the sentence so that it would exceed the  
30 statutory maximum for the offense, the portion of the sentence  
31 representing the enhancement may not be reduced;

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

35 (f) Nothing in this subsection prevents a sentencing court from  
36 imposing a sentence outside the standard sentence range pursuant to RCW  
37 9.94A.535.

1 (9) An additional one-year enhancement shall be added to the  
2 standard sentence range for the felony crimes of RCW 9A.44.073,  
3 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
4 or after July 22, 2007, if the offender engaged, agreed, or offered to  
5 engage the victim in the sexual conduct in return for a fee. If the  
6 offender is being sentenced for more than one offense, the one-year  
7 enhancement must be added to the total period of total confinement for  
8 all offenses, regardless of which underlying offense is subject to the  
9 enhancement. If the offender is being sentenced for an anticipatory  
10 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,  
11 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,  
12 solicited another, or conspired to engage, agree, or offer to engage  
13 the victim in (~~(the)~~) the sexual conduct in return for a fee, an  
14 additional one-year enhancement shall be added to the standard sentence  
15 range determined under subsection (2) of this section. For purposes of  
16 this subsection, "sexual conduct" means sexual intercourse or sexual  
17 contact, both as defined in chapter 9A.44 RCW.

18 **Sec. 2.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to  
19 read as follows:

20 No person serving a sentence imposed pursuant to this chapter and  
21 committed to the custody of the department shall leave the confines of  
22 the correctional facility or be released prior to the expiration of the  
23 sentence except as follows:

24 (1) Except as otherwise provided for in subsection (2) of this  
25 section, the term of the sentence of an offender committed to a  
26 correctional facility operated by the department may be reduced by  
27 earned release time in accordance with procedures that shall be  
28 developed and promulgated by the correctional agency having  
29 jurisdiction in which the offender is confined. The earned release  
30 time shall be for good behavior and good performance, as determined by  
31 the correctional agency having jurisdiction. The correctional agency  
32 shall not credit the offender with earned release credits in advance of  
33 the offender actually earning the credits. Any program established  
34 pursuant to this section shall allow an offender to earn early release  
35 credits for presentence incarceration. If an offender is transferred  
36 from a county jail to the department, the administrator of a county  
37 jail facility shall certify to the department the amount of time spent

1 in custody at the facility and the amount of earned release time. An  
2 offender who has been convicted of a felony committed after July 23,  
3 1995, that involves any applicable deadly weapon enhancements under RCW  
4 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
5 or earned release time for that portion of his or her sentence that  
6 results from any deadly weapon enhancements. An offender convicted of  
7 vehicular homicide committed while under the influence of intoxicating  
8 liquor or any drug that involves a sentence enhancement under RCW  
9 9.94A.533(7) may not receive any earned early release time for the  
10 portion of his or her sentence that results from the enhancement.

11 (a) In the case of an offender convicted of a serious violent  
12 offense, or a sex offense that is a class A felony, committed on or  
13 after July 1, 1990, and before July 1, 2003, the aggregate earned  
14 release time may not exceed fifteen percent of the sentence. In the  
15 case of an offender convicted of a serious violent offense, or a sex  
16 offense that is a class A felony, committed on or after July 1, 2003,  
17 the aggregate earned release time may not exceed ten percent of the  
18 sentence.

19 (b)(i) In the case of an offender who qualifies under (b)(ii) of  
20 this subsection, the aggregate earned release time may not exceed fifty  
21 percent of the sentence.

22 (ii) An offender is qualified to earn up to fifty percent of  
23 aggregate earned release time under this subsection (1)(b) if he or  
24 she:

25 (A) Is classified in one of the two lowest risk categories under  
26 (b)(iii) of this subsection;

27 (B) Is not confined pursuant to a sentence for:

28 (I) A sex offense;

29 (II) A violent offense;

30 (III) A crime against persons as defined in RCW 9.94A.411;

31 (IV) A felony that is domestic violence as defined in RCW  
32 10.99.020;

33 (V) A violation of RCW 9A.52.025 (residential burglary);

34 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
35 violate, RCW 69.50.401 by manufacture or delivery or possession with  
36 intent to deliver methamphetamine; or

37 (VII) A violation of, or an attempt, solicitation, or conspiracy to



1 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
2 (C) Has no prior conviction for:  
3 (I) A sex offense;  
4 (II) A violent offense;  
5 (III) A crime against persons as defined in RCW 9.94A.411;  
6 (IV) A felony that is domestic violence as defined in RCW  
7 10.99.020;  
8 (V) A violation of RCW 9A.52.025 (residential burglary);  
9 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
10 violate, RCW 69.50.401 by manufacture or delivery or possession with  
11 intent to deliver methamphetamine; or  
12 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
13 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
14 (D) Participates in programming or activities as directed by the  
15 offender's individual reentry plan as provided under RCW 72.09.270 to  
16 the extent that such programming or activities are made available by  
17 the department; and  
18 (E) Has not committed a new felony after July 22, 2007, while under  
19 community supervision, community placement, or community custody.  
20 (iii) For purposes of determining an offender's eligibility under  
21 this subsection (1)(b), the department shall perform a risk assessment  
22 of every offender committed to a correctional facility operated by the  
23 department who has no current or prior conviction for a sex offense, a  
24 violent offense, a crime against persons as defined in RCW 9.94A.411,  
25 a felony that is domestic violence as defined in RCW 10.99.020, a  
26 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
27 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
28 manufacture or delivery or possession with intent to deliver  
29 methamphetamine, or a violation of, or an attempt, solicitation, or  
30 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
31 substance to a minor). The department must classify each assessed  
32 offender in one of four risk categories between highest and lowest  
33 risk.  
34 (iv) The department shall recalculate the earned release time and  
35 reschedule the expected release dates for each qualified offender under  
36 this subsection (1)(b).

1 (v) This subsection (1)(b) applies retroactively to eligible  
2 offenders serving terms of total confinement in a state correctional  
3 facility as of July 1, 2003.

4 (vi) This subsection (1)(b) does not apply to offenders convicted  
5 after July 1, 2010.

6 (c) In no other case shall the aggregate earned release time exceed  
7 one-third of the total sentence;

8 (2)(a) A person convicted of a sex offense or an offense  
9 categorized as a serious violent offense, assault in the second degree,  
10 vehicular homicide, vehicular assault, assault of a child in the second  
11 degree, any crime against persons where it is determined in accordance  
12 with RCW 9.94A.602 that the offender or an accomplice was armed with a  
13 deadly weapon at the time of commission, or any felony offense under  
14 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become  
15 eligible, in accordance with a program developed by the department, for  
16 transfer to community custody status in lieu of earned release time  
17 pursuant to subsection (1) of this section;

18 (b) A person convicted of a sex offense, a violent offense, any  
19 crime against persons under RCW 9.94A.411(2), or a felony offense under  
20 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may  
21 become eligible, in accordance with a program developed by the  
22 department, for transfer to community custody status in lieu of earned  
23 release time pursuant to subsection (1) of this section;

24 (c) The department shall, as a part of its program for release to  
25 the community in lieu of earned release, require the offender to  
26 propose a release plan that includes an approved residence and living  
27 arrangement. All offenders with community placement or community  
28 custody terms eligible for release to community custody status in lieu  
29 of earned release shall provide an approved residence and living  
30 arrangement prior to release to the community;

31 (d) The department may deny transfer to community custody status in  
32 lieu of earned release time pursuant to subsection (1) of this section  
33 if the department determines an offender's release plan, including  
34 proposed residence location and living arrangements, may violate the  
35 conditions of the sentence or conditions of supervision, place the  
36 offender at risk to violate the conditions of the sentence, place the  
37 offender at risk to reoffend, or present a risk to victim safety or  
38 community safety. The department's authority under this section is

1 independent of any court-ordered condition of sentence or statutory  
2 provision regarding conditions for community custody or community  
3 placement;

4 (e) If the department denies transfer to community custody status  
5 in lieu of earned early release pursuant to (d) of this subsection, the  
6 department may transfer an offender to partial confinement in lieu of  
7 earned early release up to three months. The three months in partial  
8 confinement is in addition to that portion of the offender's term of  
9 confinement that may be served in partial confinement as provided in  
10 this section;

11 (f) An offender serving a term of confinement imposed under RCW  
12 9.94A.670(4)(a) is not eligible for earned release credits under this  
13 section;

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

18 (4)(a) The secretary may authorize an extraordinary medical  
19 placement for an offender when all of the following conditions exist:

20 (i) The offender has a medical condition that is serious enough to  
21 require costly care or treatment;

22 (ii) The offender poses a low risk to the community because he or  
23 she is physically incapacitated due to age or the medical condition;  
24 and

25 (iii) Granting the extraordinary medical placement will result in  
26 a cost savings to the state.

27 (b) An offender sentenced to death or to life imprisonment without  
28 the possibility of release or parole is not eligible for an  
29 extraordinary medical placement.

30 (c) The secretary shall require electronic monitoring for all  
31 offenders in extraordinary medical placement unless the electronic  
32 monitoring equipment interferes with the function of the offender's  
33 medical equipment or results in the loss of funding for the offender's  
34 medical care. The secretary shall specify who shall provide the  
35 monitoring services and the terms under which the monitoring shall be  
36 performed.

37 (d) The secretary may revoke an extraordinary medical placement  
38 under this subsection at any time;

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

5 (6) No more than the final six months of the offender's term of  
6 confinement may be served in partial confinement designed to aid the  
7 offender in finding work and reestablishing himself or herself in the  
8 community. This is in addition to that period of earned early release  
9 time that may be exchanged for partial confinement pursuant to  
10 subsection (2)(e) of this section;

11 (7) The governor may pardon any offender;

12 (8) The department may release an offender from confinement any  
13 time within ten days before a release date calculated under this  
14 section; and

15 (9) An offender may leave a correctional facility prior to  
16 completion of his or her sentence if the sentence has been reduced as  
17 provided in RCW 9.94A.870.

18 Notwithstanding any other provisions of this section, an offender  
19 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a  
20 mandatory minimum sentence of total confinement shall not be released  
21 from total confinement before the completion of the listed mandatory  
22 minimum sentence for that felony crime of conviction unless allowed  
23 under RCW 9.94A.540, however persistent offenders are not eligible for  
24 extraordinary medical placement.

25 NEW SECTION. **Sec. 3.** This act applies prospectively only and not  
26 retroactively. It applies only to convictions occurring on or after  
27 the effective date of this act.

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