
HOUSE BILL 2497

State of Washington 61st Legislature 2010 Regular Session

By Representatives White, Orwall, Goodman, Kenney, Kessler, and Darneille

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1 AN ACT Relating to victimization of homeless persons; amending RCW
2 9.94A.533, 9A.36.080, and 36.28A.030; and adding a new section to
3 chapter 9.94A RCW.

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

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

7 In a criminal case where:

8 (1) The defendant has been convicted of assault in the first or
9 second degree, rape in the first or second degree, rape of a child in
10 the first or second degree, homicide by abuse, murder in the first or
11 second degree, manslaughter in the first or second degree, or vehicular
12 homicide; and

13 (2) There has been a special allegation pleaded and proven beyond
14 a reasonable doubt that the defendant intentionally committed one of
15 the offenses listed in subsection (1) of this section because he or she
16 perceived the victim to be homeless, as defined in RCW 9A.36.080(7);
17 the court shall make a finding of fact of the special allegation, or if
18 a jury trial is had, the jury shall, if it finds the defendant guilty,
19 also find a special verdict as to the special allegation.

1 **Sec. 2.** RCW 9.94A.533 and 2009 c 141 s 2 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

6 (e) Notwithstanding any other provision of law, all firearm
7 enhancements under this section are mandatory, shall be served in total
8 confinement, and shall run consecutively to all other sentencing
9 provisions, including other firearm or deadly weapon enhancements, for
10 all offenses sentenced under this chapter. However, whether or not a
11 mandatory minimum term has expired, an offender serving a sentence
12 under this subsection may be granted an extraordinary medical placement
13 when authorized under RCW 9.94A.728(~~(+4)~~) (3);

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

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

26 (4) The following additional times shall be added to the standard
27 sentence range for felony crimes committed after July 23, 1995, if the
28 offender or an accomplice was armed with a deadly weapon other than a
29 firearm as defined in RCW 9.41.010 and the offender is being sentenced
30 for one of the crimes listed in this subsection as eligible for any
31 deadly weapon enhancements based on the classification of the completed
32 felony crime. If the offender is being sentenced for more than one
33 offense, the deadly weapon enhancement or enhancements must be added to
34 the total period of confinement for all offenses, regardless of which
35 underlying offense is subject to a deadly weapon enhancement. 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 an anticipatory offense under chapter 9A.28 RCW to commit one of

1 the crimes listed in this subsection as eligible for any deadly weapon
2 enhancements, the following additional times shall be added to the
3 standard sentence range determined under subsection (2) of this section
4 based on the felony crime of conviction as classified under RCW
5 9A.28.020:

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

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

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

15 (d) If the offender is being sentenced under (a), (b), and/or (c)
16 of this subsection for any deadly weapon enhancements and the offender
17 has previously been sentenced for any deadly weapon enhancements after
18 July 23, 1995, under (a), (b), and/or (c) of this subsection or
19 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
20 weapon enhancements under this subsection shall be twice the amount of
21 the enhancement listed;

22 (e) Notwithstanding any other provision of law, all deadly weapon
23 enhancements under this section are mandatory, shall be served in total
24 confinement, and shall run consecutively to all other sentencing
25 provisions, including other firearm or deadly weapon enhancements, for
26 all offenses sentenced under this chapter. However, whether or not a
27 mandatory minimum term has expired, an offender serving a sentence
28 under this subsection may be granted an extraordinary medical placement
29 when authorized under RCW 9.94A.728(~~(+4)~~) (3);

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

35 (g) If the standard sentence range under this section exceeds the
36 statutory maximum sentence for the offense, the statutory maximum
37 sentence shall be the presumptive sentence unless the offender is a
38 persistent offender. If the addition of a deadly weapon enhancement

1 increases the sentence so that it would exceed the statutory maximum
2 for the offense, the portion of the sentence representing the
3 enhancement may not be reduced.

4 (5) The following additional times shall be added to the standard
5 sentence range if the offender or an accomplice committed the offense
6 while in a county jail or state correctional facility and the offender
7 is being sentenced for one of the crimes listed in this subsection. If
8 the offender or an accomplice committed one of the crimes listed in
9 this subsection while in a county jail or state correctional facility,
10 and the offender is being sentenced for an anticipatory offense under
11 chapter 9A.28 RCW to commit one of the crimes listed in this
12 subsection, the following additional times shall be added to the
13 standard sentence range determined under subsection (2) of this
14 section:

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

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

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

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

23 (6) An additional twenty-four months shall be added to the standard
24 sentence range for any ranked offense involving a violation of chapter
25 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
26 (~~9.94A.605~~) 9.94A.827. All enhancements under this subsection shall
27 run consecutively to all other sentencing provisions, for all offenses
28 sentenced under this chapter.

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

33 (8)(a) The following additional times shall be added to the
34 standard sentence range for felony crimes committed on or after July 1,
35 2006, if the offense was committed with sexual motivation, as that term
36 is defined in RCW 9.94A.030. If the offender is being sentenced for
37 more than one offense, the sexual motivation enhancement must be added
38 to the total period of total confinement for all offenses, regardless

1 of which underlying offense is subject to a sexual motivation
2 enhancement. If the offender committed the offense with sexual
3 motivation and the offender is being sentenced for an anticipatory
4 offense under chapter 9A.28 RCW, the following additional times shall
5 be added to the standard sentence range determined under subsection (2)
6 of this section based on the felony crime of conviction as classified
7 under RCW 9A.28.020:

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

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

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

16 (iv) If the offender is being sentenced for any sexual motivation
17 enhancements under (i), (ii), and/or (iii) of this subsection and the
18 offender has previously been sentenced for any sexual motivation
19 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
20 this subsection, all sexual motivation enhancements under this
21 subsection shall be twice the amount of the enhancement listed;

22 (b) Notwithstanding any other provision of law, all sexual
23 motivation enhancements under this subsection are mandatory, shall be
24 served in total confinement, and shall run consecutively to all other
25 sentencing provisions, including other sexual motivation enhancements,
26 for all offenses sentenced under this chapter. However, whether or not
27 a mandatory minimum term has expired, an offender serving a sentence
28 under this subsection may be granted an extraordinary medical placement
29 when authorized under RCW 9.94A.728(~~(+4)~~) (3);

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

32 (d) If the standard sentence range under this subsection exceeds
33 the statutory maximum sentence for the offense, the statutory maximum
34 sentence shall be the presumptive sentence unless the offender is a
35 persistent offender. If the addition of a sexual motivation
36 enhancement increases the sentence so that it would exceed the
37 statutory maximum for the offense, the portion of the sentence
38 representing the enhancement may not be reduced;

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

4 (f) Nothing in this subsection prevents a sentencing court from
5 imposing a sentence outside the standard sentence range pursuant to RCW
6 9.94A.535.

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

24 (10)(a) For a person age eighteen or older convicted of any
25 criminal street gang-related felony offense for which the person
26 compensated, threatened, or solicited a minor in order to involve the
27 minor in the commission of the felony offense, the standard sentence
28 range is determined by locating the sentencing grid sentence range
29 defined by the appropriate offender score and the seriousness level of
30 the completed crime, and multiplying the range by one hundred twenty-
31 five percent. If the standard sentence range under this subsection
32 exceeds the statutory maximum sentence for the offense, the statutory
33 maximum sentence is the presumptive sentence unless the offender is a
34 persistent offender.

35 (b) This subsection does not apply to any criminal street gang-
36 related felony offense for which involving a minor in the commission of
37 the felony offense is an element of the offense.

1 (c) The increased penalty specified in (a) of this subsection is
2 unavailable in the event that the prosecution gives notice that it will
3 seek an exceptional sentence based on an aggravating factor under RCW
4 9.94A.535.

5 (11) An additional twelve months and one day shall be added to the
6 standard sentence range for a conviction of attempting to elude a
7 police vehicle as defined by RCW 46.61.024, if the conviction included
8 a finding by special allegation of endangering one or more persons
9 under RCW 9.94A.834.

10 (12) An additional twelve months shall be added to the standard
11 sentence range for an offense that is also a violation of RCW
12 9.94A.831.

13 (13) An additional twenty-four months shall be added to the
14 standard sentence range for an offense that is also a violation of
15 section 1 of this act.

16 **Sec. 3.** RCW 9A.36.080 and 2009 c 180 s 1 are each amended to read
17 as follows:

18 (1) A person is guilty of malicious harassment if he or she
19 maliciously and intentionally commits one of the following acts because
20 of his or her perception of the victim's race, color, religion,
21 ancestry, national origin, gender, sexual orientation, homelessness, or
22 mental, physical, or sensory handicap:

23 (a) Causes physical injury to the victim or another person;

24 (b) Causes physical damage to or destruction of the property of the
25 victim or another person; or

26 (c) Threatens a specific person or group of persons and places that
27 person, or members of the specific group of persons, in reasonable fear
28 of harm to person or property. The fear must be a fear that a
29 reasonable person would have under all the circumstances. For purposes
30 of this section, a "reasonable person" is a reasonable person who is a
31 member of the victim's race, color, religion, ancestry, national
32 origin, gender, or sexual orientation, or who is homeless when the
33 victim is homeless, or who has the same mental, physical, or sensory
34 handicap as the victim. Words alone do not constitute malicious
35 harassment unless the context or circumstances surrounding the words
36 indicate the words are a threat. Threatening words do not constitute

1 malicious harassment if it is apparent to the victim that the person
2 does not have the ability to carry out the threat.

3 (2) In any prosecution for malicious harassment, unless evidence
4 exists which explains to the trier of fact's satisfaction that the
5 person did not intend to threaten the victim or victims, the trier of
6 fact may infer that the person intended to threaten a specific victim
7 or group of victims because of the person's perception of the victim's
8 or victims' race, color, religion, ancestry, national origin, gender,
9 sexual orientation, homelessness, or mental, physical, or sensory
10 handicap if the person commits one of the following acts:

11 (a) Burns a cross on property of a victim who is or whom the actor
12 perceives to be of African American heritage; or

13 (b) Defaces property of a victim who is or whom the actor perceives
14 to be of Jewish heritage by defacing the property with a swastika.

15 This subsection only applies to the creation of a reasonable
16 inference for evidentiary purposes. This subsection does not restrict
17 the state's ability to prosecute a person under subsection (1) of this
18 section when the facts of a particular case do not fall within (a) or
19 (b) of this subsection.

20 (3) It is not a defense that the accused was mistaken that the
21 victim was a member of a certain race, color, religion, ancestry,
22 national origin, gender, or sexual orientation, was homeless, or had a
23 mental, physical, or sensory handicap.

24 (4) Evidence of expressions or associations of the accused may not
25 be introduced as substantive evidence at trial unless the evidence
26 specifically relates to the crime charged. Nothing in this chapter
27 shall affect the rules of evidence governing impeachment of a witness.

28 (5) Every person who commits another crime during the commission of
29 a crime under this section may be punished and prosecuted for the other
30 crime separately.

31 (6) "Sexual orientation" for the purposes of this section has the
32 same meaning as in RCW 49.60.040.

33 (7) "Homelessness" or "homeless" for the purposes of this section
34 means a condition where an individual lacks a fixed, regular, and
35 adequate nighttime residence and who has a primary nighttime residence
36 that is:

37 (a) A supervised, publicly or privately operated shelter designed
38 to provide temporary living accommodations;

1 (b) A public or private place not designed for, or ordinarily used
2 as, a regular sleeping accommodation for human beings; or

3 (c) A private residence where the individual stays as a transient
4 invitee.

5 (8) Malicious harassment is a class C felony.

6 ~~((+8))~~ (9) The penalties provided in this section for malicious
7 harassment do not preclude the victims from seeking any other remedies
8 otherwise available under law.

9 ~~((+9))~~ (10) Nothing in this section confers or expands any civil
10 rights or protections to any group or class identified under this
11 section, beyond those rights or protections that exist under the
12 federal or state Constitution or the civil laws of the state of
13 Washington.

14 **Sec. 4.** RCW 36.28A.030 and 1993 c 127 s 4 are each amended to read
15 as follows:

16 (1) The Washington association of sheriffs and police chiefs shall
17 establish and maintain a central repository for the collection and
18 classification of information regarding violations of RCW 9A.36.080.
19 Upon establishing such a repository, the association shall develop a
20 procedure to monitor, record, and classify information relating to
21 violations of RCW 9A.36.080 and any other crimes of bigotry or bias
22 apparently directed against other persons because the people committing
23 the crimes perceived that their victims were of a particular race,
24 color, religion, ancestry, national origin, gender, sexual orientation,
25 were homeless, or had a mental, physical, or sensory handicap.

26 (2) All local law enforcement agencies shall report monthly to the
27 association concerning all violations of RCW 9A.36.080 and any other
28 crimes of bigotry or bias in such form and in such manner as prescribed
29 by rules adopted by the association. Agency participation in the
30 association's reporting programs, with regard to the specific data
31 requirements associated with violations of RCW 9A.36.080 and any other
32 crimes of bigotry or bias, shall be deemed to meet agency reporting
33 requirements. The association must summarize the information received
34 and file an annual report with the governor and the senate law and
35 justice committee and the house of representatives judiciary committee.

36 (3) The association shall disseminate the information according to

1 the provisions of chapters 10.97 and 10.98 RCW, and all other
2 confidentiality requirements imposed by federal or Washington law.

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