
HOUSE BILL 2835

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By Representatives Maycumber, Cody, Holy, Clibborn, Irwin, Lovick, Graves, DeBolt, Harris, Rodne, Stonier, Slatter, Kagi, Klippert, Eslick, Muri, Vick, Johnson, and Young

Read first time 01/17/18. Referred to Committee on Public Safety.

1 AN ACT Relating to establishing a special allegation and
2 sentencing enhancement for the use or consumption of heroin in the
3 presence of a person under the age of eighteen; amending RCW
4 9.94A.533; and adding a new section to chapter 9.94A RCW.

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
7 RCW to read as follows:

8 In any criminal case where the defendant has been convicted of
9 RCW 69.50.401 or 69.50.4013, where the offense involved heroin, and
10 there has been a special allegation pleaded and proven beyond a
11 reasonable doubt that the defendant used or consumed heroin, or
12 allowed another person to use or consume heroin, in the presence of a
13 person under the age of eighteen, the court shall make a finding of
14 fact of the special allegation, or if a jury trial is had, the jury
15 shall, if it finds the defendant guilty, also find a special verdict
16 as to the special allegation.

17 **Sec. 2.** RCW 9.94A.533 and 2016 c 203 s 7 are each amended to
18 read as follows:

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

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

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

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

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

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

33 (d) If the offender is being sentenced for any firearm
34 enhancements under (a), (b), and/or (c) of this subsection and the
35 offender has previously been sentenced for any deadly weapon
36 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
37 subsection or subsection (4)(a), (b), and/or (c) of this section, or
38 both, all firearm enhancements under this subsection shall be twice
39 the amount of the enhancement listed;

1 (e) Notwithstanding any other provision of law, all firearm
2 enhancements under this section are mandatory, shall be served in
3 total confinement, and shall run consecutively to all other
4 sentencing provisions, including other firearm or deadly weapon
5 enhancements, for all offenses sentenced under this chapter. However,
6 whether or not a mandatory minimum term has expired, an offender
7 serving a sentence under this subsection may be:

8 (i) Granted an extraordinary medical placement when authorized
9 under RCW 9.94A.728(1)(c); or

10 (ii) Released under the provisions of RCW 9.94A.730;

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

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

23 (4) The following additional times shall be added to the standard
24 sentence range for felony crimes committed after July 23, 1995, if
25 the offender or an accomplice was armed with a deadly weapon other
26 than a firearm as defined in RCW 9.41.010 and the offender is being
27 sentenced for one of the crimes listed in this subsection as eligible
28 for any deadly weapon enhancements based on the classification of the
29 completed felony crime. If the offender is being sentenced for more
30 than one offense, the deadly weapon enhancement or enhancements must
31 be added to the total period of confinement for all offenses,
32 regardless of which underlying offense is subject to a deadly weapon
33 enhancement. If the offender or an accomplice was armed with a deadly
34 weapon other than a firearm as defined in RCW 9.41.010 and the
35 offender is being sentenced for an anticipatory offense under chapter
36 9A.28 RCW to commit one of the crimes listed in this subsection as
37 eligible for any deadly weapon enhancements, the following additional
38 times shall be added to the standard sentence range determined under
39 subsection (2) of this section based on the felony crime of
40 conviction as classified under RCW 9A.28.020:

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

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

7 (c) Six months 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 and not covered under (f) of this subsection;

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

17 (e) Notwithstanding any other provision of law, all deadly weapon
18 enhancements under this section are mandatory, shall be served in
19 total confinement, and shall run consecutively to all other
20 sentencing provisions, including other firearm or deadly weapon
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:

24 (i) Granted an extraordinary medical placement when authorized
25 under RCW 9.94A.728(1)(c); or

26 (ii) Released under the provisions of RCW 9.94A.730;

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

32 (g) If the standard sentence range under this section exceeds the
33 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 deadly weapon enhancement
36 increases the sentence so that it would exceed the statutory maximum
37 for the offense, the portion of the sentence representing the
38 enhancement may not be reduced.

39 (5) The following additional times shall be added to the standard
40 sentence range if the offender or an accomplice committed the offense

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

10 (a) Eighteen months for offenses committed under RCW 69.50.401(2)

11 (a) or (b) or 69.50.410;

12 (b) Fifteen months for offenses committed under RCW 69.50.401(2)

13 (c), (d), or (e);

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

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

18 (6) An additional twenty-four months shall be added to the
19 standard sentence range for any ranked offense involving a violation
20 of chapter 69.50 RCW if the offense was also a violation of RCW
21 69.50.435 ~~((or))~~, 9.94A.827, or section 1 of this act. All
22 enhancements under this subsection shall run consecutively to all
23 other sentencing provisions, for all offenses sentenced under this
24 chapter.

25 (7) An additional two years shall be added to the standard
26 sentence range for vehicular homicide committed while under the
27 influence of intoxicating liquor or any drug as defined by RCW
28 46.61.502 for each prior offense as defined in RCW 46.61.5055.

29 Notwithstanding any other provision of law, all impaired driving
30 enhancements under this subsection are mandatory, shall be served in
31 total confinement, and shall run consecutively to all other
32 sentencing provisions, including other impaired driving enhancements,
33 for all offenses sentenced under this chapter.

34 An offender serving a sentence under this subsection may be
35 granted an extraordinary medical placement when authorized under RCW
36 9.94A.728(1)(c).

37 (8)(a) The following additional times shall be added to the
38 standard sentence range for felony crimes committed on or after July
39 1, 2006, if the offense was committed with sexual motivation, as that
40 term is defined in RCW 9.94A.030. If the offender is being sentenced

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

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

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

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

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

24 (b) Notwithstanding any other provision of law, all sexual
25 motivation enhancements under this subsection are mandatory, shall be
26 served in total confinement, and shall run consecutively to all other
27 sentencing provisions, including other sexual motivation
28 enhancements, for all offenses sentenced under this chapter. However,
29 whether or not a mandatory minimum term has expired, an offender
30 serving a sentence under this subsection may be:

31 (i) Granted an extraordinary medical placement when authorized
32 under RCW 9.94A.728(1)(c); or

33 (ii) Released under the provisions of RCW 9.94A.730;

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

36 (d) If the standard sentence range under this subsection exceeds
37 the statutory maximum sentence for the offense, the statutory maximum
38 sentence shall be the presumptive sentence unless the offender is a
39 persistent offender. If the addition of a sexual motivation
40 enhancement increases the sentence so that it would exceed the

1 statutory maximum for the offense, the portion of the sentence
2 representing the enhancement may not be reduced;

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

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

9 (9) An additional one-year enhancement shall be added to the
10 standard sentence range for the felony crimes of RCW 9A.44.073,
11 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
12 or after July 22, 2007, if the offender engaged, agreed, or offered
13 to engage the victim in the sexual conduct in return for a fee. If
14 the offender is being sentenced for more than one offense, the
15 one-year enhancement must be added to the total period of total
16 confinement for all offenses, regardless of which underlying offense
17 is subject to the enhancement. If the offender is being sentenced for
18 an anticipatory offense for the felony crimes of RCW 9A.44.073,
19 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
20 offender attempted, solicited another, or conspired to engage, agree,
21 or offer to engage the victim in the sexual conduct in return for a
22 fee, an additional one-year enhancement shall be added to the
23 standard sentence range determined under subsection (2) of this
24 section. For purposes of this subsection, "sexual conduct" means
25 sexual intercourse or sexual contact, both as defined in chapter
26 9A.44 RCW.

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

38 (b) This subsection does not apply to any criminal street gang-
39 related felony offense for which involving a minor in the commission
40 of 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
3 will seek an exceptional sentence based on an aggravating factor
4 under RCW 9.94A.535.

5 (11) An additional twelve months and one day shall be added to
6 the standard sentence range for a conviction of attempting to elude a
7 police vehicle as defined by RCW 46.61.024, if the conviction
8 included a finding by special allegation of endangering one or more
9 persons 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 twelve months 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 46.61.520 or for vehicular assault committed while under the
17 influence of intoxicating liquor or any drug as defined by RCW
18 46.61.522, or for any felony driving under the influence (RCW
19 46.61.502(6)) or felony physical control under the influence (RCW
20 46.61.504(6)) for each child passenger under the age of sixteen who
21 is an occupant in the defendant's vehicle. These enhancements shall
22 be mandatory, shall be served in total confinement, and shall run
23 consecutively to all other sentencing provisions. If the addition of
24 a minor child enhancement increases the sentence so that it would
25 exceed the statutory maximum for the offense, the portion of the
26 sentence representing the enhancement may not be reduced.

27 (14) An additional twelve months shall be added to the standard
28 sentence range for an offense that is also a violation of RCW
29 9.94A.832.

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