
SUBSTITUTE SENATE BILL 5703

State of Washington **65th Legislature** **2017 Regular Session**

By Senate Ways & Means (originally sponsored by Senator Padden)

READ FIRST TIME 02/24/17.

1 AN ACT Relating to a special allegation for habitual property
2 offenders; amending RCW 9.94A.533; adding a new section to chapter
3 9.94A RCW; creating new sections; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds there to be a
6 significant number of property crimes in Washington and that the
7 current practices in the criminal justice system are ineffective in
8 reducing recidivism.

9 (2) The legislature further finds that a large portion of
10 property crimes in Washington are committed by habitual offenders.
11 Increasing the sanctions for habitual property offenders will provide
12 more effective deterrents to recidivism. The legislature intends to
13 enhance the courts' discretion to more appropriately sentence
14 habitual property offenders with significant histories of burglary
15 and theft.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A
17 RCW to read as follows:

18 (1) The prosecuting attorney may file a special allegation when
19 sufficient evidence exists to show that the accused is a habitual
20 property offender.

1 (2) In a criminal case in which there has been a special
2 allegation that the accused is a habitual property offender and it is
3 proven by a reasonable doubt to the trier of fact, the person shall
4 be sentenced in accordance with RCW 9.94A.533(15).

5 (3) For purposes of this section, a person is a habitual property
6 offender if:

7 (a) The present felony conviction for which the person is being
8 sentenced is for residential burglary, burglary in the second degree,
9 theft in the first degree, theft in the second degree, theft of a
10 firearm, unlawful issuance of checks or drafts, organized retail
11 theft, theft with special circumstances, or mail theft;

12 (b) The person has an offender score of nine points or higher;

13 (c) At least nine of the points in the person's offender score
14 result from any combination of the following felony offenses:
15 Residential burglary, burglary in the second degree, theft in the
16 first degree, theft in the second degree, theft of a firearm,
17 unlawful issuance of checks or drafts, organized retail theft, theft
18 with special circumstances, or mail theft; and

19 (d) The person has either received drug treatment related to any
20 felony conviction or has refused drug treatment related to any felony
21 conviction.

22 **Sec. 3.** RCW 9.94A.533 and 2016 c 203 s 7 are each amended to
23 read as follows:

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

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

32 (3) The following additional times shall be added to the standard
33 sentence range for felony crimes committed after July 23, 1995, if
34 the offender or an accomplice was armed with a firearm as defined in
35 RCW 9.41.010 and the offender is being sentenced for one of the
36 crimes listed in this subsection as eligible for any firearm
37 enhancements based on the classification of the completed felony
38 crime. If the offender is being sentenced for more than one offense,
39 the firearm enhancement or enhancements must be added to the total

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

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

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

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

19 (d) If the offender is being sentenced for any firearm
20 enhancements under (a), (b), and/or (c) of this subsection and the
21 offender has previously been sentenced for any deadly weapon
22 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
23 subsection or subsection (4)(a), (b), and/or (c) of this section, or
24 both, all firearm enhancements under this subsection shall be twice
25 the amount of the enhancement listed;

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

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

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

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,
39 unlawful possession of a firearm in the first and second degree, and
40 use of a machine gun in a felony;

1 (g) If the standard sentence range under this section exceeds the
2 statutory maximum sentence for the offense, the statutory maximum
3 sentence shall be the presumptive sentence unless the offender is a
4 persistent offender. If the addition of a firearm enhancement
5 increases the sentence so that it would exceed the statutory maximum
6 for the offense, the portion of the sentence representing the
7 enhancement may not be reduced.

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

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

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

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

35 (d) If the offender is being sentenced under (a), (b), and/or (c)
36 of this subsection for any deadly weapon enhancements and the
37 offender has previously been sentenced for any deadly weapon
38 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
39 subsection or subsection (3)(a), (b), and/or (c) of this section, or

1 both, all deadly weapon enhancements under this subsection shall be
2 twice the amount of the enhancement listed;

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

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

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

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

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

25 (5) The following additional times shall be added to the standard
26 sentence range if the offender or an accomplice committed the offense
27 while in a county jail or state correctional facility and the
28 offender is being sentenced for one of the crimes listed in this
29 subsection. If the offender or an accomplice committed one of the
30 crimes listed in this subsection while in a county jail or state
31 correctional facility, and the offender is being sentenced for an
32 anticipatory offense under chapter 9A.28 RCW to commit one of the
33 crimes listed in this subsection, the following additional times
34 shall be added to the standard sentence range determined under
35 subsection (2) of this section:

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

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

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

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

4 (6) An additional twenty-four months shall be added to the
5 standard sentence range for any ranked offense involving a violation
6 of chapter 69.50 RCW if the offense was also a violation of RCW
7 69.50.435 or 9.94A.827. All enhancements under this subsection shall
8 run consecutively to all other sentencing provisions, for all
9 offenses sentenced under this chapter.

10 (7) An additional two years shall be added to the standard
11 sentence range for vehicular homicide committed while under the
12 influence of intoxicating liquor or any drug as defined by RCW
13 46.61.502 for each prior offense as defined in RCW 46.61.5055.

14 Notwithstanding any other provision of law, all impaired driving
15 enhancements under this subsection are mandatory, shall be served in
16 total confinement, and shall run consecutively to all other
17 sentencing provisions, including other impaired driving enhancements,
18 for all offenses sentenced under this chapter.

19 An offender serving a sentence under this subsection may be
20 granted an extraordinary medical placement when authorized under RCW
21 9.94A.728(1)(c).

22 (8)(a) The following additional times shall be added to the
23 standard sentence range for felony crimes committed on or after July
24 1, 2006, if the offense was committed with sexual motivation, as that
25 term is defined in RCW 9.94A.030. If the offender is being sentenced
26 for more than one offense, the sexual motivation enhancement must be
27 added to the total period of total confinement for all offenses,
28 regardless of which underlying offense is subject to a sexual
29 motivation enhancement. If the offender committed the offense with
30 sexual motivation and the offender is being sentenced for an
31 anticipatory offense under chapter 9A.28 RCW, the following
32 additional times shall be added to the standard sentence range
33 determined under subsection (2) of this section based on the felony
34 crime of conviction as classified under RCW 9A.28.020:

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

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

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

3 (iv) If the offender is being sentenced for any sexual motivation
4 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
5 the offender has previously been sentenced for any sexual motivation
6 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
7 (iii) of this subsection, all sexual motivation enhancements under
8 this subsection shall be twice the amount of the enhancement listed;

9 (b) Notwithstanding any other provision of law, all sexual
10 motivation enhancements under this subsection are mandatory, shall be
11 served in total confinement, and shall run consecutively to all other
12 sentencing provisions, including other sexual motivation
13 enhancements, for all offenses sentenced under this chapter. However,
14 whether or not a mandatory minimum term has expired, an offender
15 serving a sentence under this subsection may be:

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

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

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

21 (d) If the standard sentence range under this subsection exceeds
22 the 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 sexual motivation
25 enhancement increases the sentence so that it would exceed the
26 statutory maximum for the offense, the portion of the sentence
27 representing the enhancement may not be reduced;

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

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

34 (9) An additional one-year enhancement shall be added to the
35 standard sentence range for the felony crimes of RCW 9A.44.073,
36 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
37 or after July 22, 2007, if the offender engaged, agreed, or offered
38 to engage the victim in the sexual conduct in return for a fee. If
39 the offender is being sentenced for more than one offense, the
40 one-year enhancement must be added to the total period of total

1 confinement for all offenses, regardless of which underlying offense
2 is subject to the enhancement. If the offender is being sentenced for
3 an anticipatory offense for the felony crimes of RCW 9A.44.073,
4 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
5 offender attempted, solicited another, or conspired to engage, agree,
6 or offer to engage the victim in the sexual conduct in return for a
7 fee, an additional one-year enhancement shall be added to the
8 standard sentence range determined under subsection (2) of this
9 section. For purposes of this subsection, "sexual conduct" means
10 sexual intercourse or sexual contact, both as defined in chapter
11 9A.44 RCW.

12 (10)(a) For a person age eighteen or older convicted of any
13 criminal street gang-related felony offense for which the person
14 compensated, threatened, or solicited a minor in order to involve the
15 minor in the commission of the felony offense, the standard sentence
16 range is determined by locating the sentencing grid sentence range
17 defined by the appropriate offender score and the seriousness level
18 of the completed crime, and multiplying the range by one hundred
19 twenty-five percent. If the standard sentence range under this
20 subsection exceeds the statutory maximum sentence for the offense,
21 the statutory maximum sentence is the presumptive sentence unless the
22 offender is a persistent offender.

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

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

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

35 (12) An additional twelve months shall be added to the standard
36 sentence range for an offense that is also a violation of RCW
37 9.94A.831.

38 (13) An additional twelve months shall be added to the standard
39 sentence range for vehicular homicide committed while under the
40 influence of intoxicating liquor or any drug as defined by RCW

1 46.61.520 or for vehicular assault committed while under the
2 influence of intoxicating liquor or any drug as defined by RCW
3 46.61.522, or for any felony driving under the influence (RCW
4 46.61.502(6)) or felony physical control under the influence (RCW
5 46.61.504(6)) for each child passenger under the age of sixteen who
6 is an occupant in the defendant's vehicle. These enhancements shall
7 be mandatory, shall be served in total confinement, and shall run
8 consecutively to all other sentencing provisions. If the addition of
9 a minor child enhancement increases the sentence so that it would
10 exceed the statutory maximum for the offense, the portion of the
11 sentence representing the enhancement may not be reduced.

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

15 (15)(a) The following additional times shall be added to the
16 standard sentence range if the court finds that the offender is a
17 habitual property offender pursuant to section 2 of this act:

18 (i) Twenty-four months if the offender is being sentenced for a
19 felony defined as a class B felony;

20 (ii) Twelve months if the offender is being sentenced for a
21 felony defined as a class C felony.

22 (b) A sentence imposed pursuant to this subsection is not to
23 exceed the statutory maximum for the crime as established in RCW
24 9A.20.021.

25 (c) Notwithstanding any other provision of law, all habitual
26 property offender enhancements imposed under this subsection (15) are
27 mandatory and shall be served in total confinement. However, whether
28 or not the mandatory minimum term has expired, an offender serving a
29 sentence under this subsection may be granted an extraordinary
30 medical placement when authorized under RCW 9.94A.728(1)(c).

31 NEW SECTION. Sec. 4. If specific funding for the purposes of
32 this act, referencing this act by bill or chapter number, is not
33 provided by June 30, 2017, in the omnibus appropriations act, this
34 act is null and void.

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