
HOUSE BILL 1700

State of Washington

66th Legislature

2019 Regular Session

By Representatives Shea, Klippert, and McCaslin

Read first time 01/28/19. 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 certain
3 controlled substances in the presence of a person under the age of
4 eighteen; amending RCW 9.94A.533; adding a new section to chapter
5 9.94A RCW; and prescribing penalties.

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

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

9 In any criminal case where the defendant has been convicted of
10 RCW 69.50.401 or 69.50.4013 and there has been a special allegation
11 pleaded and proven beyond a reasonable doubt that the defendant used
12 or consumed a controlled substance classified in Schedule I or II
13 without a valid prescription, or allowed another person to use or
14 consume a controlled substance classified in Schedule I or II without
15 a valid prescription, in the presence of a person under the age of
16 eighteen, the court shall make a finding of fact of the special
17 allegation, or if a jury trial is had, the jury shall, if it finds
18 the defendant guilty, also find a special verdict as to the special
19 allegation.

1 **Sec. 2.** RCW 9.94A.533 and 2018 c 7 s 8 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
6 criminal attempt, solicitation, or conspiracy under chapter 9A.28
7 RCW, the standard sentence range is determined by locating the
8 sentencing grid sentence range defined by the appropriate offender
9 score and the seriousness level of the completed crime, and
10 multiplying the range by 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
13 the offender or an accomplice was armed with a firearm as defined in
14 RCW 9.41.010 and the offender is being sentenced for one of the
15 crimes listed in this subsection as eligible for any firearm
16 enhancements based on the classification of the completed felony
17 crime. If the offender is being sentenced for more than one offense,
18 the firearm enhancement or enhancements must be added to the total
19 period of confinement for all offenses, regardless of which
20 underlying offense is subject to a firearm enhancement. If the
21 offender or an accomplice was armed with a firearm as defined in RCW
22 9.41.010 and the offender is being sentenced for an anticipatory
23 offense under chapter 9A.28 RCW to commit one of the crimes listed in
24 this subsection as eligible for any firearm enhancements, the
25 following additional times shall be added to the standard sentence
26 range determined under subsection (2) of this section based on the
27 felony crime of conviction as classified under RCW 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,
33 and not covered under (f) of this subsection;

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

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

1 subsection or subsection (4)(a), (b), and/or (c) of this section, or
2 both, all firearm enhancements under this subsection shall be twice
3 the amount of the enhancement listed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (g) If the standard sentence range under this section exceeds the
38 statutory maximum sentence for the offense, the statutory maximum
39 sentence shall be the presumptive sentence unless the offender is a
40 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
7 offender is being sentenced for one of the crimes listed in this
8 subsection. If the offender or an accomplice committed one of the
9 crimes listed in this subsection while in a county jail or state
10 correctional facility, and the offender is being sentenced for an
11 anticipatory offense under chapter 9A.28 RCW to commit one of the
12 crimes listed in this subsection, the following additional times
13 shall be added to the standard sentence range determined under
14 subsection (2) of this 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
21 a state correctional facility or county jail shall be deemed to be
22 part of that facility or county jail.

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

29 (b) An additional twelve months shall be added to the standard
30 sentence range for any ranked offense involving a violation of RCW
31 69.50.401 or 69.50.4013 if the offense was also a violation of
32 section 1 of this act. All enhancements under this subsection (6) (b)
33 shall run consecutively to all other sentencing provisions, for all
34 offenses sentenced under this chapter.

35 (7) An additional two years shall be added to the standard
36 sentence range for vehicular homicide committed while under the
37 influence of intoxicating liquor or any drug as defined by RCW
38 46.61.502 for each prior offense as defined in RCW 46.61.5055.

39 Notwithstanding any other provision of law, all impaired driving
40 enhancements under this subsection are mandatory, shall be served in

1 total confinement, and shall run consecutively to all other
2 sentencing provisions, including other impaired driving enhancements,
3 for all offenses sentenced under this chapter.

4 An offender serving a sentence under this subsection may be
5 granted an extraordinary medical placement when authorized under RCW
6 9.94A.728(1)(c).

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

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

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

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

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

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

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

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

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

6 (d) If the standard sentence range under this subsection exceeds
7 the 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 sexual motivation
10 enhancement increases the sentence so that it would exceed the
11 statutory maximum for the offense, the portion of the sentence
12 representing the enhancement may not be reduced;

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

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

19 (9) An additional one-year enhancement shall be added to the
20 standard sentence range for the felony crimes of RCW 9A.44.073,
21 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
22 or after July 22, 2007, if the offender engaged, agreed, or offered
23 to engage the victim in the sexual conduct in return for a fee. If
24 the offender is being sentenced for more than one offense, the
25 one-year enhancement must be added to the total period of total
26 confinement for all offenses, regardless of which underlying offense
27 is subject to the enhancement. If the offender is being sentenced for
28 an anticipatory offense for the felony crimes of RCW 9A.44.073,
29 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
30 offender attempted, solicited another, or conspired to engage, agree,
31 or offer to engage the victim in the sexual conduct in return for a
32 fee, an additional one-year enhancement shall be added to the
33 standard sentence range determined under subsection (2) of this
34 section. For purposes of this subsection, "sexual conduct" means
35 sexual intercourse or sexual contact, both as defined in chapter
36 9A.44 RCW.

37 (10)(a) For a person age eighteen or older convicted of any
38 criminal street gang-related felony offense for which the person
39 compensated, threatened, or solicited a minor in order to involve the
40 minor in the commission of the felony offense, the standard sentence

1 range is determined by locating the sentencing grid sentence range
2 defined by the appropriate offender score and the seriousness level
3 of the completed crime, and multiplying the range by one hundred
4 twenty-five percent. If the standard sentence range under this
5 subsection exceeds the statutory maximum sentence for the offense,
6 the statutory maximum sentence is the presumptive sentence unless the
7 offender is a persistent offender.

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

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

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

20 (12) An additional twelve months shall be added to the standard
21 sentence range for an offense that is also a violation of RCW
22 9.94A.831.

23 (13) An additional twelve months shall be added to the standard
24 sentence range for vehicular homicide committed while under the
25 influence of intoxicating liquor or any drug as defined by RCW
26 46.61.520 or for vehicular assault committed while under the
27 influence of intoxicating liquor or any drug as defined by RCW
28 46.61.522, or for any felony driving under the influence (RCW
29 46.61.502(6)) or felony physical control under the influence (RCW
30 46.61.504(6)) for each child passenger under the age of sixteen who
31 is an occupant in the defendant's vehicle. These enhancements shall
32 be mandatory, shall be served in total confinement, and shall run
33 consecutively to all other sentencing provisions. If the addition of
34 a minor child enhancement increases the sentence so that it would
35 exceed the statutory maximum for the offense, the portion of the
36 sentence representing the enhancement may not be reduced.

1 (14) An additional twelve months shall be added to the standard
2 sentence range for an offense that is also a violation of RCW
3 9.94A.832.

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