
HOUSE BILL 2627

State of Washington

66th Legislature

2020 Regular Session

By Representatives Walsh, Corry, and Shea

Read first time 01/16/20. Referred to Committee on Public Safety.

1 AN ACT Relating to establishing a special allegation and
2 sentencing enhancement for wearing a mask or other disguise during or
3 immediately following the commission of any felony offense; amending
4 RCW 9.94A.533 and 9.94A.729; adding a new section to chapter 9.94A
5 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 The prosecuting attorney may file a special allegation in any
10 felony case where sufficient evidence demonstrates that the defendant
11 used a mask or other disguise to obscure the defendant's face during
12 or immediately following the commission of the offense for the
13 purpose of avoiding identification. The state has the burden of
14 proving a special allegation under this section beyond a reasonable
15 doubt. If a jury is had, the jury shall, if it finds the defendant
16 guilty, also find a special verdict as to the special allegation. If
17 no jury is had, the court shall make a finding of fact as to the
18 special allegation.

19 **Sec. 2.** RCW 9.94A.533 and 2018 c 7 s 8 are each amended to read
20 as follows:

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

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

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

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

35 (d) If the offender is being sentenced for any firearm
36 enhancements under (a), (b), and/or (c) of this subsection 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 (4) (a), (b), and/or (c) of this section, or

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

3 (e) Notwithstanding any other provision of law, all firearm
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 firearm enhancements in this section shall apply to all
14 felony crimes except the following: Possession of a machine gun or
15 bump-fire stock, possessing a stolen firearm, drive-by shooting,
16 theft of a firearm, unlawful possession of a firearm in the first and
17 second degree, and use of a machine gun or bump-fire stock in a
18 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
28 the offender or an accomplice was armed with a deadly weapon other
29 than a firearm as defined in RCW 9.41.010 and the offender is being
30 sentenced for one of the crimes listed in this subsection as eligible
31 for any deadly weapon enhancements based on the classification of the
32 completed felony crime. If the offender is being sentenced for more
33 than one offense, the deadly weapon enhancement or enhancements must
34 be added to the total period of confinement for all offenses,
35 regardless of which underlying offense is subject to a deadly weapon
36 enhancement. If the offender or an accomplice was armed with a deadly
37 weapon other than a firearm as defined in RCW 9.41.010 and the
38 offender is being sentenced for an anticipatory offense under chapter
39 9A.28 RCW to commit one of the crimes listed in this subsection as
40 eligible for any deadly weapon enhancements, the following additional

1 times shall be added to the standard sentence range determined under
2 subsection (2) of this section based on the felony crime of
3 conviction as classified under RCW 9A.28.020:

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

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

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

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

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

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

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

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 or bump-fire stock, possessing a stolen firearm, drive-by shooting,
33 theft of a firearm, unlawful possession of a firearm in the first and
34 second degree, and use of a machine gun or bump-fire stock in a
35 felony;

36 (g) If the standard sentence range under this section exceeds the
37 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 deadly weapon enhancement
40 increases the sentence so that it would exceed the statutory maximum

1 for the offense, the portion of the sentence representing the
2 enhancement may not be reduced.

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

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

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

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

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

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

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

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

37 An offender serving a sentence under this subsection may be
38 granted an extraordinary medical placement when authorized under RCW
39 9.94A.728(1)(c).

1 (8)(a) The following additional times shall be added to the
2 standard sentence range for felony crimes committed on or after July
3 1, 2006, if the offense was committed with sexual motivation, as that
4 term is defined in RCW 9.94A.030. If the offender is being sentenced
5 for more than one offense, the sexual motivation enhancement must be
6 added to the total period of total confinement for all offenses,
7 regardless of which underlying offense is subject to a sexual
8 motivation enhancement. If the offender committed the offense with
9 sexual motivation and the offender is being sentenced for an
10 anticipatory offense under chapter 9A.28 RCW, the following
11 additional times shall be added to the standard sentence range
12 determined under subsection (2) of this section based on the felony
13 crime of conviction as classified under RCW 9A.28.020:

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

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

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

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

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

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

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

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

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

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

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

14 (9) An additional one-year enhancement shall be added to the
15 standard sentence range for the felony crimes of RCW 9A.44.073,
16 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
17 or after July 22, 2007, if the offender engaged, agreed, or offered
18 to engage the victim in the sexual conduct in return for a fee. If
19 the offender is being sentenced for more than one offense, the
20 one-year enhancement must be added to the total period of total
21 confinement for all offenses, regardless of which underlying offense
22 is subject to the enhancement. If the offender is being sentenced for
23 an anticipatory offense for the felony crimes of RCW 9A.44.073,
24 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
25 offender attempted, solicited another, or conspired to engage, agree,
26 or offer to engage the victim in the sexual conduct in return for a
27 fee, an additional one-year enhancement shall be added to the
28 standard sentence range determined under subsection (2) of this
29 section. For purposes of this subsection, "sexual conduct" means
30 sexual intercourse or sexual contact, both as defined in chapter
31 9A.44 RCW.

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

1 the statutory maximum sentence is the presumptive sentence unless the
2 offender is a persistent offender.

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

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

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

15 (12) An additional twelve months shall be added to the standard
16 sentence range for an offense that is also a violation of RCW
17 9.94A.831.

18 (13) An additional twelve months shall be added to the standard
19 sentence range for vehicular homicide committed while under the
20 influence of intoxicating liquor or any drug as defined by RCW
21 46.61.520 or for vehicular assault committed while under the
22 influence of intoxicating liquor or any drug as defined by RCW
23 46.61.522, or for any felony driving under the influence (RCW
24 46.61.502(6)) or felony physical control under the influence (RCW
25 46.61.504(6)) for each child passenger under the age of sixteen who
26 is an occupant in the defendant's vehicle. These enhancements shall
27 be mandatory, shall be served in total confinement, and shall run
28 consecutively to all other sentencing provisions. If the addition of
29 a minor child enhancement increases the sentence so that it would
30 exceed the statutory maximum for the offense, the portion of the
31 sentence representing the enhancement may not be reduced.

32 (14) An additional twelve months shall be added to the standard
33 sentence range for an offense that is also a violation of RCW
34 9.94A.832.

35 (15) An additional twelve months shall be added to the standard
36 sentence range for any ranked offense if the conviction included a
37 finding by special allegation under section 1 of this act. All
38 enhancements under this subsection run consecutively to all other
39 sentencing provisions, including multiple enhancements imposed under
40 this subsection, for all offenses sentenced under this chapter.

1 **Sec. 3.** RCW 9.94A.729 and 2015 c 134 s 4 are each amended to
2 read as follows:

3 (1)(a) The term of the sentence of an offender committed to a
4 correctional facility operated by the department may be reduced by
5 earned release time in accordance with procedures that shall be
6 developed and adopted by the correctional agency having jurisdiction
7 in which the offender is confined. The earned release time shall be
8 for good behavior and good performance, as determined by the
9 correctional agency having jurisdiction. The correctional agency
10 shall not credit the offender with earned release credits in advance
11 of the offender actually earning the credits.

12 (b) Any program established pursuant to this section shall allow
13 an offender to earn early release credits for presentence
14 incarceration. If an offender is transferred from a county jail to
15 the department, the administrator of a county jail facility shall
16 certify to the department the amount of time spent in custody at the
17 facility and the number of days of early release credits lost or not
18 earned. The department may approve a jail certification from a
19 correctional agency that calculates early release time based on the
20 actual amount of confinement time served by the offender before
21 sentencing when an erroneous calculation of confinement time served
22 by the offender before sentencing appears on the judgment and
23 sentence. The department must adjust an offender's rate of early
24 release listed on the jail certification to be consistent with the
25 rate applicable to offenders in the department's facilities. However,
26 the department is not authorized to adjust the number of presentence
27 early release days that the jail has certified as lost or not earned.

28 (2)(a) An offender who has been convicted of a felony committed
29 after July 23, 1995, that involves any applicable deadly weapon
30 enhancements under RCW 9.94A.533 (3) or (4), or both, shall not
31 receive any good time credits or earned release time for that portion
32 of his or her sentence that results from any deadly weapon
33 enhancements.

34 (b) An offender who has been convicted of a felony with an
35 enhancement under RCW 9.94A.533(15) committed on or after the
36 effective date of this section may not receive any good time credits
37 or earned release time for the portion of his or her sentence
38 resulting from those enhancements.

39 (3) An offender may earn early release time as follows:

1 (a) In the case of an offender sentenced pursuant to RCW
2 10.95.030(3) or 10.95.035, the offender may not receive any earned
3 early release time during the minimum term of confinement imposed by
4 the court; for any remaining portion of the sentence served by the
5 offender, the aggregate earned release time may not exceed ten
6 percent of the sentence.

7 (b) In the case of an offender convicted of a serious violent
8 offense, or a sex offense that is a class A felony, committed on or
9 after July 1, 1990, and before July 1, 2003, the aggregate earned
10 release time may not exceed fifteen percent of the sentence.

11 (c) 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, 2003, the aggregate earned release time may not exceed
14 ten percent of the sentence.

15 (d) An offender is qualified to earn up to fifty percent of
16 aggregate earned release time if he or she:

17 (i) Is not classified as an offender who is at a high risk to
18 reoffend as provided in subsection (4) of this section;

19 (ii) Is not confined pursuant to a sentence for:

20 (A) A sex offense;

21 (B) A violent offense;

22 (C) A crime against persons as defined in RCW 9.94A.411;

23 (D) A felony that is domestic violence as defined in RCW
24 10.99.020;

25 (E) A violation of RCW 9A.52.025 (residential burglary);

26 (F) A violation of, or an attempt, solicitation, or conspiracy to
27 violate, RCW 69.50.401 by manufacture or delivery or possession with
28 intent to deliver methamphetamine; or

29 (G) A violation of, or an attempt, solicitation, or conspiracy to
30 violate, RCW 69.50.406 (delivery of a controlled substance to a
31 minor);

32 (iii) Has no prior conviction for the offenses listed in (d)(ii)
33 of this subsection;

34 (iv) Participates in programming or activities as directed by the
35 offender's individual reentry plan as provided under RCW 72.09.270 to
36 the extent that such programming or activities are made available by
37 the department; and

38 (v) Has not committed a new felony after July 22, 2007, while
39 under community custody.

1 (e) In no other case shall the aggregate earned release time
2 exceed one-third of the total sentence.

3 (4) The department shall perform a risk assessment of each
4 offender who may qualify for earned early release under subsection
5 (3)(d) of this section utilizing the risk assessment tool recommended
6 by the Washington state institute for public policy. Subsection
7 (3)(d) of this section does not apply to offenders convicted after
8 July 1, 2010.

9 (5)(a) A person who is eligible for earned early release as
10 provided in this section and who will be supervised by the department
11 pursuant to RCW 9.94A.501 (~~(or 9.94A.5011)~~), shall be transferred to
12 community custody in lieu of earned release time;

13 (b) The department shall, as a part of its program for release to
14 the community in lieu of earned release, require the offender to
15 propose a release plan that includes an approved residence and living
16 arrangement. All offenders with community custody terms eligible for
17 release to community custody in lieu of earned release shall provide
18 an approved residence and living arrangement prior to release to the
19 community;

20 (c) The department may deny transfer to community custody in lieu
21 of earned release time if the department determines an offender's
22 release plan, including proposed residence location and living
23 arrangements, may violate the conditions of the sentence or
24 conditions of supervision, place the offender at risk to violate the
25 conditions of the sentence, place the offender at risk to reoffend,
26 or present a risk to victim safety or community safety. The
27 department's authority under this section is independent of any
28 court-ordered condition of sentence or statutory provision regarding
29 conditions for community custody;

30 (d) If the department is unable to approve the offender's release
31 plan, the department may do one or more of the following:

32 (i) Transfer an offender to partial confinement in lieu of earned
33 early release for a period not to exceed three months. The three
34 months in partial confinement is in addition to that portion of the
35 offender's term of confinement that may be served in partial
36 confinement as provided in RCW 9.94A.728(~~(-5)~~) (1)(c);

37 (ii) Provide rental vouchers to the offender for a period not to
38 exceed three months if rental assistance will result in an approved
39 release plan.

1 A voucher must be provided in conjunction with additional
2 transition support programming or services that enable an offender to
3 participate in services including, but not limited to, substance
4 abuse treatment, mental health treatment, sex offender treatment,
5 educational programming, or employment programming;

6 (e) The department shall maintain a list of housing providers
7 that meets the requirements of RCW 72.09.285. If more than two
8 voucher recipients will be residing per dwelling unit, as defined in
9 RCW 59.18.030, rental vouchers for those recipients may only be paid
10 to a housing provider on the department's list;

11 (f) For each offender who is the recipient of a rental voucher,
12 the department shall gather data as recommended by the Washington
13 state institute for public policy in order to best demonstrate
14 whether rental vouchers are effective in reducing recidivism.

15 (6) An offender serving a term of confinement imposed under RCW
16 9.94A.670(5)(a) is not eligible for earned release credits under this
17 section.

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