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**SENATE BILL 5056**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Padden, Fortunato, Gildon, and L. Wilson

Prefiled 12/15/22. Read first time 01/09/23. Referred to Committee on Law & Justice.

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

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

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

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

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

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

4 (2) In a criminal case in which there has been a special  
5 allegation and the accused has been convicted of the underlying  
6 crime, the court shall make a finding of fact prior to sentencing  
7 whether the person is a habitual property offender based on the  
8 person's criminal history. If the court finds beyond a reasonable  
9 doubt that the person is a habitual property offender, the person  
10 shall be sentenced in accordance with RCW 9.94A.533(16).

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

13 (a) The present felony conviction for which the person is being  
14 sentenced is for residential burglary, burglary in the second degree,  
15 theft in the first degree, theft in the second degree, theft of a  
16 firearm, unlawful issuance of checks or drafts, organized retail  
17 theft, theft with special circumstances, or mail theft;

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

19 (c) At least five of the points in the person's offender score  
20 result from any combination of the following felony offenses:  
21 Residential burglary; burglary in the second degree; theft in the  
22 first degree; theft in the second degree; theft of a firearm;  
23 unlawful issuance of checks or drafts; organized retail theft; theft  
24 with special circumstances; or mail theft; or

25 (d) The person has committed three or more property crime  
26 offenses within 180 days.

27 **Sec. 3.** RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are  
28 each reenacted and amended to read as follows:

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

31 (2) For persons convicted of the anticipatory offenses of  
32 criminal attempt, solicitation, or conspiracy under chapter 9A.28  
33 RCW, the standard sentence range is determined by locating the  
34 sentencing grid sentence range defined by the appropriate offender  
35 score and the seriousness level of the completed crime, and  
36 multiplying the range by (~~seventy-five~~) 75 percent.

37 (3) The following additional times shall be added to the standard  
38 sentence range for felony crimes committed after July 23, 1995, if  
39 the offender or an accomplice was armed with a firearm as defined in

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

15 (a) Five years for any felony defined under any law as a class A  
16 felony or with a statutory maximum sentence of at least (~~twenty~~) 20  
17 years, or both, and not covered under (f) of this subsection;

18 (b) Three years for any felony defined under any law as a class B  
19 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or  
20 both, and not covered under (f) of this subsection;

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

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

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

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

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

1 (f) The firearm enhancements in this section shall apply to all  
2 felony crimes except the following: Possession of a machine gun or  
3 bump-fire stock, possessing a stolen firearm, drive-by shooting,  
4 theft of a firearm, unlawful possession of a firearm in the first and  
5 second degree, and use of a machine gun or bump-fire stock in a  
6 felony;

7 (g) If the standard sentence range under this section exceeds the  
8 statutory maximum sentence for the offense, the statutory maximum  
9 sentence shall be the presumptive sentence unless the offender is a  
10 persistent offender. If the addition of a firearm enhancement  
11 increases the sentence so that it would exceed the statutory maximum  
12 for the offense, the portion of the sentence representing the  
13 enhancement may not be reduced.

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

32 (a) Two years for any felony defined under any law as a class A  
33 felony or with a statutory maximum sentence of at least (~~twenty~~) 20  
34 years, or both, and not covered under (f) of this subsection;

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

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

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

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

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

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

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

24 (g) If the standard sentence range under this section exceeds the  
25 statutory maximum sentence for the offense, the statutory maximum  
26 sentence shall be the presumptive sentence unless the offender is a  
27 persistent offender. If the addition of a deadly weapon enhancement  
28 increases the sentence so that it would exceed the statutory maximum  
29 for the offense, the portion of the sentence representing the  
30 enhancement may not be reduced.

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

1 shall be added to the standard sentence range determined under  
2 subsection (2) of this section:

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

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

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

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

11 (6) An additional (~~twenty-four~~) 24 months shall be added to the  
12 standard sentence range for any ranked offense involving a violation  
13 of chapter 69.50 RCW if the offense was also a violation of RCW  
14 69.50.435 or 9.94A.827. All enhancements under this subsection shall  
15 run consecutively to all other sentencing provisions, for all  
16 offenses sentenced under this chapter.

17 (7) An additional two years shall be added to the standard  
18 sentence range for vehicular homicide committed while under the  
19 influence of intoxicating liquor or any drug as defined by RCW  
20 46.61.502 for each prior offense as defined in RCW 46.61.5055.

21 Notwithstanding any other provision of law, all impaired driving  
22 enhancements under this subsection are mandatory, shall be served in  
23 total confinement, and shall run consecutively to all other  
24 sentencing provisions, including other impaired driving enhancements,  
25 for all offenses sentenced under this chapter.

26 An offender serving a sentence under this subsection may be  
27 granted an extraordinary medical placement when authorized under RCW  
28 9.94A.728(1)(c).

29 (8)(a) The following additional times shall be added to the  
30 standard sentence range for felony crimes committed on or after July  
31 1, 2006, if the offense was committed with sexual motivation, as that  
32 term is defined in RCW 9.94A.030. If the offender is being sentenced  
33 for more than one offense, the sexual motivation enhancement must be  
34 added to the total period of total confinement for all offenses,  
35 regardless of which underlying offense is subject to a sexual  
36 motivation enhancement. If the offender committed the offense with  
37 sexual motivation and the offender is being sentenced for an  
38 anticipatory offense under chapter 9A.28 RCW, the following  
39 additional times shall be added to the standard sentence range

1 determined under subsection (2) of this section based on the felony  
2 crime of conviction as classified under RCW 9A.28.020:

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

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

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

11 (iv) If the offender is being sentenced for any sexual motivation  
12 enhancements under (a)(i), (ii), and/or (iii) of this subsection and  
13 the offender has previously been sentenced for any sexual motivation  
14 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or  
15 (iii) of this subsection, all sexual motivation enhancements under  
16 this subsection shall be twice the amount of the enhancement listed;

17 (b) Notwithstanding any other provision of law, all sexual  
18 motivation enhancements under this subsection are mandatory, shall be  
19 served in total confinement, and shall run consecutively to all other  
20 sentencing provisions, including other sexual motivation  
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 (c) The sexual motivation enhancements in this subsection apply  
28 to all felony crimes;

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

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

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

4 (9) An additional one-year enhancement shall be added to the  
5 standard sentence range for the felony crimes of RCW 9A.44.073,  
6 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
7 or after July 22, 2007, if the offender engaged, agreed, or offered  
8 to engage the victim in the sexual conduct in return for a fee. If  
9 the offender is being sentenced for more than one offense, the  
10 one-year enhancement must be added to the total period of total  
11 confinement for all offenses, regardless of which underlying offense  
12 is subject to the enhancement. If the offender is being sentenced for  
13 an anticipatory offense for the felony crimes of RCW 9A.44.073,  
14 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the  
15 offender attempted, solicited another, or conspired to engage, agree,  
16 or offer to engage the victim in the sexual conduct in return for a  
17 fee, an additional one-year enhancement shall be added to the  
18 standard sentence range determined under subsection (2) of this  
19 section. For purposes of this subsection, "sexual conduct" means  
20 sexual intercourse or sexual contact, both as defined in chapter  
21 9A.44 RCW.

22 (10)(a) For a person age (~~(eighteen)~~) 18 or older convicted of  
23 any criminal street gang-related felony offense for which the person  
24 compensated, threatened, or solicited a minor in order to involve the  
25 minor in the commission of the felony offense, the standard sentence  
26 range is determined by locating the sentencing grid sentence range  
27 defined by the appropriate offender score and the seriousness level  
28 of the completed crime, and multiplying the range by (~~(one hundred~~  
29 ~~twenty-five)~~) 125 percent. If the standard sentence range under this  
30 subsection exceeds the statutory maximum sentence for the offense,  
31 the statutory maximum sentence is the presumptive sentence unless the  
32 offender is a persistent offender.

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

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



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

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

9 (13) An additional (~~twelve~~) 12 months shall be added to the  
10 standard sentence range for vehicular homicide committed while under  
11 the influence of intoxicating liquor or any drug as defined by RCW  
12 46.61.520 or for vehicular assault committed while under the  
13 influence of intoxicating liquor or any drug as defined by RCW  
14 46.61.522, or for any felony driving under the influence (RCW  
15 46.61.502(6)) or felony physical control under the influence (RCW  
16 46.61.504(6)) for each child passenger under the age of (~~sixteen~~)  
17 16 who is an occupant in the defendant's vehicle. These enhancements  
18 shall be mandatory, shall be served in total confinement, and shall  
19 run consecutively to all other sentencing provisions, including other  
20 minor child enhancements, for all offenses sentenced under this  
21 chapter. If the addition of a minor child enhancement increases the  
22 sentence so that it would exceed the statutory maximum for the  
23 offense, the portion of the sentence representing the enhancement  
24 shall be mandatory, shall be served in total confinement, and shall  
25 run consecutively to all other sentencing provisions.

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

29 (15) Regardless of any provisions in this section, if a person is  
30 being sentenced in adult court for a crime committed under age  
31 (~~eighteen~~) 18, the court has full discretion to depart from  
32 mandatory sentencing enhancements and to take the particular  
33 circumstances surrounding the defendant's youth into account.

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

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

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

1       (b) A sentence imposed pursuant to this subsection is not to  
2 exceed the statutory maximum for the crime as established in RCW  
3 9A.20.021.

4       (c) Notwithstanding any other provision of law, all habitual  
5 property offender enhancements imposed under this subsection (16) are  
6 mandatory and shall be served in total confinement. However, whether  
7 or not the mandatory minimum term has expired, an offender serving a  
8 sentence under this subsection may be granted an extraordinary  
9 medical placement when authorized under RCW 9.94A.728(1)(c).

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