
HOUSE BILL 1012

State of Washington

61st Legislature

2009 Regular Session

By Representatives Campbell, O'Brien, Kelley, and Lias

Prefiled 12/05/08. Read first time 01/12/09. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to marketing controlled substances to minors;
2 reenacting and amending RCW 9.94A.533; adding a new section to chapter
3 9.94A RCW; and prescribing penalties.

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

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

7 In a criminal case where:

8 (1) The defendant has been convicted of manufacturing, selling,
9 delivering, or possessing with intent to manufacture, sell, or deliver
10 a controlled substance listed in RCW 69.50.401; and

11 (2) There has been a special allegation pleaded and proven beyond
12 a reasonable doubt that the defendant committed the crime that involved
13 a controlled substance listed in RCW 69.50.401 that was flavored,
14 colored, packaged, or otherwise altered in such a way that is designed
15 with the intent to make that controlled substance more appealing to a
16 person under eighteen years of age;

17 the court shall make a finding of fact of the special allegation, or if
18 a jury trial is had, the jury shall, if it finds the defendant guilty,
19 also find a special verdict as to the special allegation.

1 **Sec. 2.** RCW 9.94A.533 and 2008 c 276 s 301 and 2008 c 219 s 3 are
2 each reenacted and amended to read 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 criminal
6 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
7 standard sentence range is determined by locating the sentencing grid
8 sentence range defined by the appropriate offender score and the
9 seriousness level of the completed crime, and multiplying the range by
10 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 the
13 offender or an accomplice was armed with a firearm as defined in RCW
14 9.41.010 and the offender is being sentenced for one of the crimes
15 listed in this subsection as eligible for any firearm enhancements
16 based on the classification of the completed felony crime. If the
17 offender is being sentenced for more than one offense, the firearm
18 enhancement or enhancements must be added to the total period of
19 confinement for all offenses, regardless of which underlying offense is
20 subject to a firearm enhancement. If the offender or an accomplice was
21 armed with a firearm as defined in RCW 9.41.010 and the offender is
22 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
23 commit one of the crimes listed in this subsection as eligible for any
24 firearm enhancements, the following additional times shall be added to
25 the standard sentence range determined under subsection (2) of this
26 section based on the felony crime of conviction as classified under RCW
27 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, and
33 not covered under (f) of this subsection;

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

37 (d) If the offender is being sentenced for any firearm enhancements
38 under (a), (b), and/or (c) of this subsection and the offender has

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

6 (e) Notwithstanding any other provision of law, all firearm
7 enhancements under this section are mandatory, shall be served in total
8 confinement, and shall run consecutively to all other sentencing
9 provisions, including other firearm or deadly weapon enhancements, for
10 all offenses sentenced under this chapter. However, whether or not a
11 mandatory minimum term has expired, an offender serving a sentence
12 under this subsection may be granted an extraordinary medical placement
13 when authorized under RCW 9.94A.728(4);

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

1 the crimes listed in this subsection as eligible for any deadly weapon
2 enhancements, the following additional times shall be added to the
3 standard sentence range determined under subsection (2) of this section
4 based on the felony crime of conviction as classified under RCW
5 9A.28.020:

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

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

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

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

22 (e) Notwithstanding any other provision of law, all deadly weapon
23 enhancements under this section are mandatory, shall be served in total
24 confinement, and shall run consecutively to all other sentencing
25 provisions, including other firearm or deadly weapon enhancements, for
26 all offenses sentenced under this chapter. However, whether or not a
27 mandatory minimum term has expired, an offender serving a sentence
28 under this subsection may be granted an extraordinary medical placement
29 when authorized under RCW 9.94A.728(4);

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

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

23 (6) (~~An additional twenty four months shall be added to the~~
24 ~~standard sentence range for any ranked offense involving~~) (a) The
25 following additional times shall be added to the standard sentence
26 range if the offense involves a violation of chapter 69.50 RCW (~~(if the~~
27 ~~offense was))~~):

28 (i) Twenty-four months for an offense that is also a violation of
29 RCW 69.50.435 or 9.94A.605;

30 (ii) Thirty-six months for an offense that is also a violation of
31 section 1 of this act.

32 (b) All enhancements under this subsection shall run consecutively
33 to all other sentencing provisions, for all offenses sentenced under
34 this chapter.

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

1 (8)(a) The following additional times shall be added to the
2 standard sentence range for felony crimes committed on or after July 1,
3 2006, if the offense was committed with sexual motivation, as that term
4 is defined in RCW 9.94A.030. If the offender is being sentenced for
5 more than one offense, the sexual motivation enhancement must be added
6 to the total period of total confinement for all offenses, regardless
7 of which underlying offense is subject to a sexual motivation
8 enhancement. If the offender committed the offense with sexual
9 motivation and the offender is being sentenced for an anticipatory
10 offense under chapter 9A.28 RCW, the following additional times shall
11 be added to the standard sentence range determined under subsection (2)
12 of this section based on the felony crime of conviction as classified
13 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 (i), (ii), and/or (iii) of this subsection and the
24 offender has previously been sentenced for any sexual motivation
25 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
26 this subsection, all sexual motivation enhancements under this
27 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 enhancements,
32 for all offenses sentenced under this chapter. However, whether or not
33 a mandatory minimum term has expired, an offender serving a sentence
34 under this subsection may be granted an extraordinary medical placement
35 when authorized under RCW 9.94A.728(4);

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

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

1 exceeds the statutory maximum sentence for the offense, the statutory
2 maximum sentence is the presumptive sentence unless the offender is a
3 persistent offender.

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

7 (c) The increased penalty specified in (a) of this subsection is
8 unavailable in the event that the prosecution gives notice that it will
9 seek an exceptional sentence based on an aggravating factor under RCW
10 9.94A.535.

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

--- END ---