
HOUSE BILL 2358

State of Washington

58th Legislature

2004 Regular Session

By Representatives Kagi, O'Brien, Upthegrove, Sullivan, Dickerson, Sommers and Darneille

Prefiled 1/9/2004. Read first time 01/12/2004. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to eliminating duplicative sentencing enhancements
2 for drug offenses with a deadly weapon special verdict; amending RCW
3 9.94A.518 and 9.94A.518; creating new sections; providing an effective
4 date; providing an expiration date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) Offenders who committed crimes while armed with deadly weapons
8 pose a serious threat to public safety and should therefore be punished
9 more severely than offenders who committed crimes without deadly
10 weapons;

11 (b) Extra time is currently added to the sentences of all offenders
12 who were armed with deadly weapons when they committed their crimes;

13 (c) Since 2003, in addition to the extra time added to their
14 sentences, offenders convicted of certain drug-related crimes while
15 armed with deadly weapons have had the seriousness level of their
16 crimes automatically increased to the highest seriousness level
17 available for such crimes; and

18 (d) This increased seriousness level has resulted in the sentences

1 for such armed drug offenders being enhanced twice -- a duplicative
2 enhancement that does not exist for any other type of crime, including
3 violent crime.

4 (2) The legislature therefore intends to:

5 (a) Continue to punish criminals armed with deadly weapons more
6 severely than criminals who are not so armed; and

7 (b) Remove the duplicative deadly weapon sentence enhancement for
8 drug-related crimes thereby enhancing their punishments in the same
9 manner as any other crime involving a deadly weapon.

10 **Sec. 2.** RCW 9.94A.518 and 2002 c 290 s 9 are each amended to read
11 as follows:

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	TABLE 4
	DRUG OFFENSES
	INCLUDED WITHIN EACH
	SERIOUSNESS LEVEL
III	((Any felony offense under chapter
	69.50 RCW with a deadly weapon
	special verdict under RCW
	9.94A.602))
	Controlled Substance Homicide (RCW
	69.50.415)
	Delivery of imitation controlled
	substance by person eighteen or
	over to person under eighteen
	(RCW 69.52.030(2))
	Involving a minor in drug dealing
	(RCW 69.50.401(f))
	Manufacture of methamphetamine
	(RCW 69.50.401(a)(1)(ii))

1 Over 18 and deliver heroin,
2 methamphetamine, a narcotic
3 from Schedule I or II, or
4 flunitrazepam from Schedule IV
5 to someone under 18 (RCW
6 69.50.406)

7 Over 18 and deliver narcotic from
8 Schedule III, IV, or V or a
9 nonnarcotic, except flunitrazepam
10 or methamphetamine, from
11 Schedule I-V to someone under 18
12 and 3 years junior (RCW
13 69.50.406)

14 Possession of Ephedrine,
15 Pseudoephedrine, or Anhydrous
16 Ammonia with intent to
17 manufacture methamphetamine
18 (RCW 69.50.440)

19 Selling for profit (controlled or
20 counterfeit) any controlled
21 substance (RCW 69.50.410)

22 II Create, deliver, or possess a counterfeit
23 controlled substance (RCW
24 69.50.401(b))

25 Deliver or possess with intent to
26 deliver methamphetamine (RCW
27 69.50.401(a)(1)(ii))

28 Delivery of a material in lieu of a
29 controlled substance (RCW
30 69.50.401(c))

31 Maintaining a Dwelling or Place for
32 Controlled Substances (RCW
33 69.50.402(a)(6))

34 Manufacture, deliver, or possess with
35 intent to deliver amphetamine
36 (RCW 69.50.401(a)(1)(ii))

1 Manufacture, deliver, or possess with
2 intent to deliver narcotics from
3 Schedule I or II or flunitrazepam
4 from Schedule IV (RCW
5 69.50.401(a)(1)(i))

6 Manufacture, deliver, or possess with
7 intent to deliver narcotics from
8 Schedule III, IV, or V or
9 nonnarcotics from Schedule I-V
10 (except marijuana, amphetamine,
11 methamphetamines, or
12 flunitrazepam) (RCW
13 69.50.401(a)(1) (iii) through (v))

14 Manufacture, distribute, or possess
15 with intent to distribute an
16 imitation controlled substance
17 (RCW 69.52.030(1))

18 I Forged Prescription (RCW 69.41.020)
19 Forged Prescription for a Controlled
20 Substance (RCW 69.50.403)

21 Manufacture, deliver, or possess with
22 intent to deliver marijuana (RCW
23 69.50.401(a)(1)(iii))

24 Possess Controlled Substance that is a
25 Narcotic from Schedule III, IV, or
26 V or Nonnarcotic from Schedule
27 I-V (RCW 69.50.401(d))

28 Possession of Controlled Substance
29 that is either heroin or narcotics
30 from Schedule I or II (RCW
31 69.50.401(d))

32 Unlawful Use of Building for Drug
33 Purposes (RCW 69.53.010)

34 **Sec. 3.** RCW 9.94A.518 and 2003 c 53 s 57 are each amended to read
35 as follows:
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TABLE 4
DRUG OFFENSES
INCLUDED WITHIN EACH
SERIOUSNESS LEVEL
III ((~~Any felony offense under chapter
69.50 RCW with a deadly weapon
special verdict under RCW
9.94A.602~~))
Controlled Substance Homicide (RCW
69.50.415)
Delivery of imitation controlled
substance by person eighteen or
over to person under eighteen
(RCW 69.52.030(2))
Involving a minor in drug dealing
(RCW 69.50.4015)
Manufacture of methamphetamine
(RCW 69.50.401(2)(b))
Over 18 and deliver heroin,
methamphetamine, a narcotic
from Schedule I or II, or
flunitrazepam from Schedule IV
to someone under 18 (RCW
69.50.406)
Over 18 and deliver narcotic from
Schedule III, IV, or V or a
nonnarcotic, except flunitrazepam
or methamphetamine, from
Schedule I-V to someone under 18
and 3 years junior (RCW
69.50.406)

1 Possession of Ephedrine,
2 Pseudoephedrine, or Anhydrous
3 Ammonia with intent to
4 manufacture
5 methamphetamine (RCW
6 69.50.440)
7 Selling for profit (controlled or
8 counterfeit) any controlled
9 substance (RCW 69.50.410)
10 II Create, deliver, or possess a counterfeit
11 controlled substance (RCW
12 69.50.4011)
13 Deliver or possess with intent to
14 deliver methamphetamine (RCW
15 69.50.401(2)(b))
16 Delivery of a material in lieu of a
17 controlled substance (RCW
18 69.50.4012)
19 Maintaining a Dwelling or Place for
20 Controlled Substances (RCW
21 69.50.402(1)(f))
22 Manufacture, deliver, or possess with
23 intent to deliver amphetamine
24 (RCW 69.50.401(2)(b))
25 Manufacture, deliver, or possess with
26 intent to deliver narcotics from
27 Schedule I or II or flunitrazepam
28 from Schedule IV (RCW
29 69.50.401(2)(a))
30 Manufacture, deliver, or possess with
31 intent to deliver narcotics from
32 Schedule III, IV, or V or
33 nonnarcotics from Schedule I-V
34 (except marijuana, amphetamine,
35 methamphetamines, or
36 flunitrazepam) (RCW
37 69.50.401(2) (c) through (e))

1 Manufacture, distribute, or possess
2 with intent to distribute an
3 imitation controlled substance
4 (RCW 69.52.030(1))
5 I Forged Prescription (RCW 69.41.020)
6 Forged Prescription for a Controlled
7 Substance (RCW 69.50.403)
8 Manufacture, deliver, or possess with
9 intent to deliver marijuana (RCW
10 69.50.401(2)(c))
11 Possess Controlled Substance that is a
12 Narcotic from Schedule III, IV, or
13 V or Nonnarcotic from Schedule
14 I-V (RCW 69.50.4013)
15 Possession of Controlled Substance
16 that is either heroin or narcotics
17 from Schedule I or II (RCW
18 69.50.4013)
19 Unlawful Use of Building for Drug
20 Purposes (RCW 69.53.010)

21 NEW SECTION. **Sec. 4.** (1) This act applies retroactively to
22 offenses committed between July 1, 2003, and the effective date of this
23 section. To this extent, this act applies retroactively, but in all
24 other respects it applies prospectively to offenses committed on or
25 after the effective date of this section.

26 (2)(a) The legislature intends that every offender serving, on or
27 after the effective date of this section, a term of total confinement
28 within the standard range for an offense that has a seriousness level
29 of III under RCW 9.94A.518 solely because the offense had a deadly
30 weapon special verdict under RCW 9.94A.602 shall be resentenced, as
31 promptly as practicable, pursuant to the amendments made in sections 2
32 and 3 of this act.

33 (b) Such an offender shall be resentenced as follows:

34 (i) An offender who was originally sentenced to total confinement
35 for a period within the standard range under RCW 9.94A.517 for an
36 offense that has a seriousness level of III solely because the offense
37 had a deadly weapon special verdict under RCW 9.94A.602 shall be

1 resentenced to total confinement within the standard range under RCW
2 9.94A.517 if the amendments made in section 2 or 3 of this act would
3 result in the seriousness level of the offense being lowered.

4 (ii) The new term of confinement shall be calculated at the same
5 relative point within the new standard range that the original term of
6 confinement occupied within the original standard range, so that the
7 new term corresponds to the original term as a percentage of the
8 interval between the top and bottom of the applicable range.

9 (c) The department of corrections and agencies operating county
10 jails shall identify offenders eligible for resentencing under this
11 section and in each case notify the sentencing court and the offender.
12 To facilitate resentencing of offenders under this section, the
13 legislature requests that the supreme court authorize one or more
14 superior court judges to perform judicial duties in other superior
15 courts, under Article III, section (2)(a) of the state Constitution.

16 (3) If resentencing under this section results in a term of
17 confinement of twelve months or less for an offender who was confined
18 in the custody of the department of corrections under the original
19 sentence, the offender shall serve the remainder of the new term in the
20 custody of the department of corrections.

21 (4) In no case shall the resentencing under this section result in
22 the offender serving a greater term of total confinement.

23 NEW SECTION. **Sec. 5.** Section 2 of this act is necessary for the
24 immediate preservation of the public peace, health, or safety, or
25 support of the state government and its existing public institutions,
26 and takes effect immediately.

27 NEW SECTION. **Sec. 6.** Section 2 of this act expires July 1, 2004.

28 NEW SECTION. **Sec. 7.** Section 3 of this act takes effect July 1,
29 2004.

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