

SSB 5312 - S AMD 119

By Senator Holmquist

WITHDRAWN 3/13/2007

1 On page 8, after line 31, insert the following:

2 "NEW SECTION. **Sec. 11.** A new section is added to chapter 9.94A RCW to  
3 read as follows:

4 (1) In a prosecution for theft in the first or second degree, the  
5 prosecution may file a special allegation of disproportionate impact  
6 when sufficient admissible evidence exists, which, when considered with  
7 the most plausible, reasonably foreseeable defense that could be raised  
8 under the evidence, would justify a finding by a reasonable and  
9 objective fact-finder that the damage to the victim greatly exceeds the  
10 value of the stolen property.

11 (2) Once a special allegation has been made under this section, the  
12 state has the burden to prove beyond a reasonable doubt that the damage  
13 to the victim greatly exceeds the value of the stolen property. If a  
14 jury is had, the jury shall, if it finds the defendant guilty, also  
15 find a special verdict as to whether the damage to the victim greatly  
16 exceeds the value of the stolen property. If no jury is had, the court  
17 shall make a finding of fact as to whether the damage to the victim  
18 greatly exceeds the value of the stolen property.

19 (3) For the purposes of this section, damage to the victim greatly  
20 exceeds the value of the stolen property when the replacement cost of  
21 the stolen item is more than three times the value of the stolen item,  
22 or the theft of the item creates a public hazard.

23 NEW SECTION. **Sec. 12.** A new section is added to chapter 9.94A RCW  
24 to read as follows:

25 (1) In a prosecution for possessing stolen property in the first or  
26 second degree, the prosecution may file a special allegation of  
27 disproportionate impact when sufficient admissible evidence exists,  
28 which, when considered with the most plausible, reasonably foreseeable  
29 defense that could be raised under the evidence, would justify a  
30 finding by a reasonable and objective fact-finder that the damage to

1 the victim from whom the property was stolen greatly exceeds the value  
2 of the stolen property.

3 (2) Once a special allegation has been made under this section, the  
4 state has the burden to prove beyond a reasonable doubt that the damage  
5 to the victim from whom the property was stolen greatly exceeds the  
6 value of the stolen property. If a jury is had, the jury shall, if it  
7 finds the defendant guilty, also find a special verdict as to whether  
8 the damage to the victim from whom the property was stolen greatly  
9 exceeds the value of the stolen property. If no jury is had, the court  
10 shall make a finding of fact as to whether the damage to the victim  
11 from whom the property was stolen greatly exceeds the value of the  
12 stolen property.

13 (3) For the purposes of this section, damage to the victim from  
14 whom the property was stolen greatly exceeds the value of the stolen  
15 property when the replacement cost of the stolen item is more than  
16 three times the value of the stolen item, or the theft of the item  
17 creates a public hazard.

18 **Sec. 13.** RCW 9.94A.533 and 2006 c 339 s 301 and 2006 c 123 s 1 are  
19 each reenacted and amended to read as follows:

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

22 (2) For persons convicted of the anticipatory offenses of criminal  
23 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
24 standard sentence range is determined by locating the sentencing grid  
25 sentence range defined by the appropriate offender score and the  
26 seriousness level of the completed crime, and multiplying the range by  
27 seventy-five percent.

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

1 being sentenced for an anticipatory offense under chapter 9A.28 RCW to  
2 commit one of the crimes listed in this subsection as eligible for any  
3 firearm enhancements, the following additional times shall be added to  
4 the standard sentence range determined under subsection (2) of this  
5 section based on the felony crime of conviction as classified under RCW  
6 9A.28.020:

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

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

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

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

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

31 (f) The firearm enhancements in this section shall apply to all  
32 felony crimes except the following: Possession of a machine gun,  
33 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
34 unlawful possession of a firearm in the first and second degree, and  
35 use of a machine gun in a 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 firearm 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 (4) The following additional times shall be added to the standard  
5 sentence range for felony crimes committed after July 23, 1995, if the  
6 offender or an accomplice was armed with a deadly weapon other than a  
7 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
8 for one of the crimes listed in this subsection as eligible for any  
9 deadly weapon enhancements based on the classification of the completed  
10 felony crime. If the offender is being sentenced for more than one  
11 offense, the deadly weapon enhancement or enhancements must be added to  
12 the total period of confinement for all offenses, regardless of which  
13 underlying offense is subject to a deadly weapon enhancement. If the  
14 offender or an accomplice was armed with a deadly weapon other than a  
15 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
16 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
17 the crimes listed in this subsection as eligible for any deadly weapon  
18 enhancements, the following additional times shall be added to the  
19 standard sentence range determined under subsection (2) of this section  
20 based on the felony crime of conviction as classified under RCW  
21 9A.28.020:

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

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

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

31 (d) If the offender is being sentenced under (a), (b), and/or (c)  
32 of this subsection for any deadly weapon enhancements and the offender  
33 has previously been sentenced for any deadly weapon enhancements after  
34 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
35 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly  
36 weapon enhancements under this subsection shall be twice the amount of  
37 the enhancement listed;

38 (e) Notwithstanding any other provision of law, all deadly weapon  
39 enhancements under this section are mandatory, shall be served in total

1 confinement, and shall run consecutively to all other sentencing  
2 provisions, including other firearm or deadly weapon enhancements, for  
3 all offenses sentenced under this chapter. However, whether or not a  
4 mandatory minimum term has expired, an offender serving a sentence  
5 under this subsection may be granted an extraordinary medical placement  
6 when authorized under RCW 9.94A.728(4);

7 (f) The deadly weapon enhancements in this section shall apply to  
8 all felony crimes except the following: Possession of a machine gun,  
9 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
10 unlawful possession of a firearm in the first and second degree, and  
11 use of a machine gun in a felony;

12 (g) If the standard sentence range under this section exceeds the  
13 statutory maximum sentence for the offense, the statutory maximum  
14 sentence shall be the presumptive sentence unless the offender is a  
15 persistent offender. If the addition of a deadly weapon enhancement  
16 increases the sentence so that it would exceed the statutory maximum  
17 for the offense, the portion of the sentence representing the  
18 enhancement may not be reduced.

19 (5) The following additional times shall be added to the standard  
20 sentence range if the offender or an accomplice committed the offense  
21 while in a county jail or state correctional facility and the offender  
22 is being sentenced for one of the crimes listed in this subsection. If  
23 the offender or an accomplice committed one of the crimes listed in  
24 this subsection while in a county jail or state correctional facility,  
25 and the offender is being sentenced for an anticipatory offense under  
26 chapter 9A.28 RCW to commit one of the crimes listed in this  
27 subsection, the following additional times shall be added to the  
28 standard sentence range determined under subsection (2) of this  
29 section:

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

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

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

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

38 (6) An additional twenty-four months shall be added to the standard  
39 sentence range for any ranked offense involving a violation of chapter

1 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
2 9.94A.605. All enhancements under this subsection shall run  
3 consecutively to all other sentencing provisions, for all offenses  
4 sentenced under this chapter.

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

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

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

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

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

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

36 (b) Notwithstanding any other provision of law, all sexual  
37 motivation enhancements under this subsection are mandatory, shall be  
38 served in total confinement, and shall run consecutively to all other  
39 sentencing provisions, including other sexual motivation enhancements,

1 for all offenses sentenced under this chapter. However, whether or not  
2 a mandatory minimum term has expired, an offender serving a sentence  
3 under this subsection may be granted an extraordinary medical placement  
4 when authorized under RCW 9.94A.728(4);

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

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

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

17 (f) Nothing in this subsection prevents a sentencing court from  
18 imposing a sentence outside the standard sentence range pursuant to RCW  
19 9.94A.535.

20 (9) An additional twelve months and one day shall be added to the  
21 standard sentence range for theft in the first or second degree when  
22 there has been a special verdict or finding that the damage to the  
23 victim greatly exceeds the value of the stolen property under section  
24 9 of this act.

25 (10) An additional twelve months and one day shall be added to the  
26 standard sentence range for possessing stolen property in the first or  
27 second degree when there has been a special verdict or finding that the  
28 damage to the victim from whom the property was stolen greatly exceeds  
29 the value of the stolen property under section 10 of this act."

30 Renumber the remaining sections consecutively and correct any  
31 internal references accordingly.

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**SSB 5312** - S AMD 119  
By Senator Holmquist

WITHDRAWN 3/13/2007

On page 1, line 4 of the title, after "19.60.085", insert "and 9.94A.533; adding new sections to chapter 9.94A RCW"

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**EFFECT:** Adds provisions related to theft in the first and second degree and possessing stolen property in the first and second degree. Allows the prosecution, in a prosecution for theft or possessing stolen property in the first and second degree, to file a special allegation of disproportionate impact when sufficient evidence exists that the damage to the victim greatly exceeds the value of the stolen property. Provides that damage to the victim greatly exceeds the value of the stolen property when the replacement cost of the stolen item is more than three times the value of the stolen item, or the theft of the item creates a public hazard. Provides that the prosecutor has the burden of proving the special allegation beyond a reasonable doubt to the jury (or to the judge, if there is no jury). Provides that, if the special allegation is proved, an additional 12 months and one day will be added to the standard sentence range for the offense.