

# SENATE BILL REPORT

## SB 6009

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As of January 15, 2014

**Title:** An act relating to a special allegation for habitual property offenders.

**Brief Description:** Establishing a special allegation for habitual property offenders.

**Sponsors:** Senators Padden and O'Ban.

**Brief History:**

**Committee Activity:** Law & Justice: 1/15/14.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Kelly Walsh (786-7755)

**Background:** When a person is convicted of a felony crime, the court must impose a sentence within the standard sentencing range as established by the seriousness level of the crime and the person's offender score. The seriousness level of each felony crime is established by statute and the offender score is based on the person's criminal history. The highest offender score contained on the standard sentencing grid is nine points.

The standard sentencing range established by the sentencing grid is adjusted under certain circumstances. Adjustments that increase the standard sentencing range apply in the following circumstances: crimes involving a firearm or deadly weapon, drug crimes, vehicular homicide, crimes committed while held in county jail or prison, crimes with a sexual motivation, certain sex crimes perpetrated against a child, eluding police, and robbery of a pharmacy. Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the finder of fact and proved beyond a reasonable doubt. A prosecutor must file the special allegation and prove to the fact finder that the special circumstance exists beyond a reasonable doubt in order for the adjustment to be applied to the sentencing standard range. Some adjustments are required by statute to be served in total confinement. Total confinement is a period during which the offender is not eligible for alternatives or good time and must serve the total confinement period inside the physical boundaries of a jail or prison for 24 hours per day. The length of a sentence imposed by a judge pursuant to an adjustment to the standard sentencing range is not subject to appeal by the defendant.

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Current law also permits the court to impose a sentence outside of the standard sentencing range for a felony offense if the court finds that there are substantial and compelling reasons justifying an exceptional sentence. The length of an exceptional sentence is subject to appeal by the defendant because it involves the exercise of judicial discretion.

The statutory maximum sentence for a class B felony is ten years. The statutory maximum for a class C felony is five years.

**Summary of Bill:** A prosecutor may file a special allegation to increase an offender's standard felony sentencing range if the offender is a habitual property offender. A habitual property offender is defined as a person who: (1) has an offender score of nine points or higher; (2) the present felony for which the offender is being sentenced is residential burglary, burglary in the second degree, theft in the first degree, theft in the second degree, theft of a firearm, felony unlawful issuance of bank checks or drafts, organized retail theft, theft with special circumstances, or mail theft; and (3) at least nine of the points in the person's offender score result from any combination of the property crimes listed above in section 2. If the court finds by a preponderance of the evidence that the offender is a habitual property offender and the offender is being sentenced for a class B felony, 24 months are added to the standard sentencing range. If the court finds by a preponderance of the evidence that the offender is a habitual offender and the offender is being sentenced for a class C felony, 12 months are added to the standard sentencing range. The offender's sentence cannot exceed the statutory maximum for the crime. If the adjustment is alleged by the prosecutor and found by the judge, the adjustment is mandatory and must be served in total confinement.

**Appropriation:** None.

**Fiscal Note:** Requested on January 9, 2014.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: These offenders are not committing violent offenses, but they are eating up resources and are not being deterred. These offenders are far off of the sentencing grid in terms of offender score and are not seeing appropriate punishment. We see people who have been arrested with up to 50 counts of burglary in the second degree or residential burglary and they do not receive significant prison time. In the case of residential burglary, someone's house is invaded. This has a huge and lasting impact on the victim. These repeat offenders should be taken off the street and should have some significant time to serve for their crimes. Property crime decreases when these repeat offenders are incarcerated.

**Persons Testifying:** PRO: Larry Haskell, Spokane County Deputy Prosecuting Attorney; Ozzie Knezovich, Spokane County Sheriff.