
SENATE BILL 5703

State of Washington

65th Legislature

2017 Regular Session

By Senator Padden

Read first time 02/03/17. Referred to Committee on Law & Justice.

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

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

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

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

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

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

1 (2) In a criminal case in which there has been a special
2 allegation and the accused has been convicted of the underlying
3 crime, the court shall make a finding of fact prior to sentencing
4 whether the person is a habitual property offender based on the
5 person's criminal history. If the court finds by a preponderance of
6 the evidence that the person is a habitual property offender, the
7 person shall be sentenced in accordance with RCW 9.94A.533(15).

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

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

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

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

22 (d) The person has either received drug treatment related to any
23 felony conviction or has refused drug treatment related to any felony
24 conviction.

25 **Sec. 3.** RCW 9.94A.533 and 2016 c 203 s 7 are each amended to
26 read as follows:

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

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

35 (3) The following additional times shall be added to the standard
36 sentence range for felony crimes committed after July 23, 1995, if
37 the offender or an accomplice was armed with a firearm as defined in
38 RCW 9.41.010 and the offender is being sentenced for one of the
39 crimes listed in this subsection as eligible for any firearm

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

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

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

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

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

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

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

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

39 (f) The firearm enhancements in this section shall apply to all
40 felony crimes except the following: Possession of a machine gun,

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

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

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

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

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

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

38 (d) If the offender is being sentenced under (a), (b), and/or (c)
39 of this subsection for any deadly weapon enhancements and the
40 offender has previously been sentenced for any deadly weapon

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

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

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

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

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

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

27 (5) The following additional times shall be added to the standard
28 sentence range if the offender or an accomplice committed the offense
29 while in a county jail or state correctional facility and the
30 offender is being sentenced for one of the crimes listed in this
31 subsection. If the offender or an accomplice committed one of the
32 crimes listed in this subsection while in a county jail or state
33 correctional facility, and the offender is being sentenced for an
34 anticipatory offense under chapter 9A.28 RCW to commit one of the
35 crimes listed in this subsection, the following additional times
36 shall be added to the standard sentence range determined under
37 subsection (2) of this section:

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

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

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

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

7 (6) An additional twenty-four months shall be added to the
8 standard sentence range for any ranked offense involving a violation
9 of chapter 69.50 RCW if the offense was also a violation of RCW
10 69.50.435 or 9.94A.827. All enhancements under this subsection shall
11 run consecutively to all other sentencing provisions, for all
12 offenses sentenced under this chapter.

13 (7) An additional two years shall be added to the standard
14 sentence range for vehicular homicide committed while under the
15 influence of intoxicating liquor or any drug as defined by RCW
16 46.61.502 for each prior offense as defined in RCW 46.61.5055.

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

22 An offender serving a sentence under this subsection may be
23 granted an extraordinary medical placement when authorized under RCW
24 9.94A.728(1)(c).

25 (8)(a) The following additional times shall be added to the
26 standard sentence range for felony crimes committed on or after July
27 1, 2006, if the offense was committed with sexual motivation, as that
28 term is defined in RCW 9.94A.030. If the offender is being sentenced
29 for more than one offense, the sexual motivation enhancement must be
30 added to the total period of total confinement for all offenses,
31 regardless of which underlying offense is subject to a sexual
32 motivation enhancement. If the offender committed the offense with
33 sexual motivation and the offender is being sentenced for an
34 anticipatory offense under chapter 9A.28 RCW, the following
35 additional times shall be added to the standard sentence range
36 determined under subsection (2) of this section based on the felony
37 crime of conviction as classified under RCW 9A.28.020:

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

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

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

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

12 (b) Notwithstanding any other provision of law, all sexual
13 motivation enhancements under this subsection are mandatory, shall be
14 served in total confinement, and shall run consecutively to all other
15 sentencing provisions, including other sexual motivation
16 enhancements, for all offenses sentenced under this chapter. However,
17 whether or not a mandatory minimum term has expired, an offender
18 serving a sentence under this subsection may be:

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

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

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

24 (d) If the standard sentence range under this subsection exceeds
25 the 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 sexual motivation
28 enhancement increases the sentence so that it would exceed the
29 statutory maximum for the offense, the portion of the sentence
30 representing the enhancement may not be reduced;

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

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

37 (9) An additional one-year enhancement shall be added to the
38 standard sentence range for the felony crimes of RCW 9A.44.073,
39 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
40 or after July 22, 2007, if the offender engaged, agreed, or offered

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

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

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

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

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

38 (12) An additional twelve months shall be added to the standard
39 sentence range for an offense that is also a violation of RCW
40 9.94A.831.

1 (13) An additional twelve months shall be added to the standard
2 sentence range for vehicular homicide committed while under the
3 influence of intoxicating liquor or any drug as defined by RCW
4 46.61.520 or for vehicular assault committed while under the
5 influence of intoxicating liquor or any drug as defined by RCW
6 46.61.522, or for any felony driving under the influence (RCW
7 46.61.502(6)) or felony physical control under the influence (RCW
8 46.61.504(6)) for each child passenger under the age of sixteen who
9 is an occupant in the defendant's vehicle. These enhancements shall
10 be mandatory, shall be served in total confinement, and shall run
11 consecutively to all other sentencing provisions. If the addition of
12 a minor child enhancement increases the sentence so that it would
13 exceed the statutory maximum for the offense, the portion of the
14 sentence representing the enhancement may not be reduced.

15 (14) An additional twelve months shall be added to the standard
16 sentence range for an offense that is also a violation of RCW
17 9.94A.832.

18 (15)(a) The following additional times shall be added to the
19 standard sentence range if the court finds that the offender is a
20 habitual property offender pursuant to section 2 of this act:

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

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

25 (b) A sentence imposed pursuant to this subsection is not to
26 exceed the statutory maximum for the crime as established in RCW
27 9A.20.021.

28 (c) Notwithstanding any other provision of law, all habitual
29 property offender enhancements imposed under this subsection (15) are
30 mandatory and shall be served in total confinement. However, whether
31 or not the mandatory minimum term has expired, an offender serving a
32 sentence under this subsection may be granted an extraordinary
33 medical placement when authorized under RCW 9.94A.728(1)(c).

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