
HOUSE BILL 3064

State of Washington 58th Legislature 2004 Regular Session

By Representatives Ahern, Lovick, Benson and Bush

Read first time 01/27/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to sentence enhancement for vehicular homicide and
2 vehicular assault; amending RCW 9.94A.533, 46.61.520, 46.61.522, and
3 13.04.030; and providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.533 and 2003 c 53 s 58 are each amended to read
6 as follows:

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

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

15 (3) The following additional times shall be added to the standard
16 sentence range for felony crimes committed after July 23, 1995, if the
17 offender or an accomplice was armed with a firearm as defined in RCW
18 9.41.010 and the offender is being sentenced for one of the crimes
19 listed in this subsection as eligible for any firearm enhancements

1 based on the classification of the completed felony crime. If the
2 offender is being sentenced for more than one offense, the firearm
3 enhancement or enhancements must be added to the total period of
4 confinement for all offenses, regardless of which underlying offense is
5 subject to a firearm enhancement. If the offender or an accomplice was
6 armed with a firearm as defined in RCW 9.41.010 and the offender is
7 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
8 commit one of the crimes listed in this subsection as eligible for any
9 firearm enhancements, the following additional times shall be added to
10 the standard sentence range determined under subsection (2) of this
11 section based on the felony crime of conviction as classified under RCW
12 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, and
18 not covered under (f) of this subsection;

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

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

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

37 (f) The firearm enhancements in this section shall apply to all
38 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 the
13 offender or an accomplice was armed with a deadly weapon other than a
14 firearm as defined in RCW 9.41.010 and the offender is being sentenced
15 for one of the crimes listed in this subsection as eligible for any
16 deadly weapon enhancements based on the classification of the completed
17 felony crime. If the offender is being sentenced for more than one
18 offense, the deadly weapon enhancement or enhancements must be added to
19 the total period of confinement for all offenses, regardless of which
20 underlying offense is subject to a deadly weapon enhancement. If the
21 offender or an accomplice was armed with a deadly weapon other than a
22 firearm as defined in RCW 9.41.010 and the offender is being sentenced
23 for an anticipatory offense under chapter 9A.28 RCW to commit one of
24 the crimes listed in this subsection as eligible for any deadly weapon
25 enhancements, the following additional times shall be added to the
26 standard sentence range determined under subsection (2) of this section
27 based on the felony crime of conviction as classified under RCW
28 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, and
34 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, and
37 not covered under (f) of this subsection;

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

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

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

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

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

- 1 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
2 (a) or (b) or 69.50.410;
3 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
4 (c), (d), or (e);
5 (c) Twelve months for offenses committed under RCW 69.50.4013.

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

9 (6) An additional twenty-four months shall be added to the standard
10 sentence range for any ranked offense involving a violation of chapter
11 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
12 9.94A.605.

13 (7) An additional (~~two~~) four 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, and an additional four years for each prior offense as
17 defined in RCW 46.61.5055. All enhancements under this subsection (7)
18 are mandatory, shall be served in total confinement, and shall run
19 consecutively to all other sentencing provisions for all offenses
20 sentenced under this chapter. The total enhancement under this
21 subsection (7) shall not exceed twelve years.

22 (8) An additional two years shall be added to the standard sentence
23 range for vehicular assault committed while under the influence of
24 intoxicating liquor or any drug as defined by RCW 46.61.502. All
25 enhancements under this subsection (8) are mandatory, shall be served
26 in total confinement, and shall run consecutively to all other
27 sentencing provisions for all offenses sentenced under this chapter.
28 The total enhancement under this subsection (8) shall not exceed six
29 years.

30 **Sec. 2.** RCW 46.61.520 and 1998 c 211 s 2 are each amended to read
31 as follows:

32 (1) When the death of any person ensues within three years as a
33 proximate result of injury proximately caused by the driving of any
34 vehicle by any person, the driver is guilty of vehicular homicide if
35 the driver was operating a motor vehicle:

36 (a) While under the influence of intoxicating liquor or any drug,
37 as defined by RCW 46.61.502; or

- 1 (b) In a reckless manner; or
2 (c) With disregard for the safety of others.

3 (2) Vehicular homicide is a class A felony punishable under chapter
4 9A.20 RCW, except that, for a conviction under subsection (1)(a) of
5 this section, there is a mandatory enhancement of four years for the
6 first offense and an additional ((two)) four years shall be added to
7 the sentence for each prior offense as defined in RCW 46.61.5055. The
8 total enhancement shall not exceed twelve years.

9 **Sec. 3.** RCW 46.61.522 and 2001 c 300 s 1 are each amended to read
10 as follows:

11 (1) A person is guilty of vehicular assault if he or she operates
12 or drives any vehicle:

13 (a) In a reckless manner and causes substantial bodily harm to
14 another; or

15 (b) While under the influence of intoxicating liquor or any drug,
16 as defined by RCW 46.61.502, and causes substantial bodily harm to
17 another; or

18 (c) With disregard for the safety of others and causes substantial
19 bodily harm to another.

20 (2) Vehicular assault is a class B felony punishable under chapter
21 9A.20 RCW, except that, for a conviction under subsection (1)(b) of
22 this section, there is a mandatory enhancement of two years for the
23 first offense and an additional two years shall be added to the
24 sentence for each prior offense as defined in RCW 46.61.5055. The
25 total enhancement shall not exceed six years.

26 (3) As used in this section, "substantial bodily harm" has the same
27 meaning as in RCW 9A.04.110.

28 **Sec. 4.** RCW 13.04.030 and 2000 c 135 s 2 are each amended to read
29 as follows:

30 (1) Except as provided in this section, the juvenile courts in this
31 state shall have exclusive original jurisdiction over all proceedings:

32 (a) Under the interstate compact on placement of children as
33 provided in chapter 26.34 RCW;

34 (b) Relating to children alleged or found to be dependent as
35 provided in chapter 26.44 RCW and in RCW 13.34.030 through
36 ((13.34.170)) 13.34.161;

1 (c) Relating to the termination of a parent and child relationship
2 as provided in RCW 13.34.180 through 13.34.210;

3 (d) To approve or disapprove out-of-home placement as provided in
4 RCW 13.32A.170;

5 (e) Relating to juveniles alleged or found to have committed
6 offenses, traffic or civil infractions, or violations as provided in
7 RCW 13.40.020 through 13.40.230, unless:

8 (i) The juvenile court transfers jurisdiction of a particular
9 juvenile to adult criminal court pursuant to RCW 13.40.110;

10 (ii) The statute of limitations applicable to adult prosecution for
11 the offense, traffic or civil infraction, or violation has expired;

12 (iii) The alleged offense or infraction is a traffic, fish,
13 boating, or game offense, or traffic or civil infraction committed by
14 a juvenile sixteen years of age or older and would, if committed by an
15 adult, be tried or heard in a court of limited jurisdiction, in which
16 instance the appropriate court of limited jurisdiction shall have
17 jurisdiction over the alleged offense or infraction, and no guardian ad
18 litem is required in any such proceeding due to the juvenile's age:
19 PROVIDED, That if such an alleged offense or infraction and an alleged
20 offense or infraction subject to juvenile court jurisdiction arise out
21 of the same event or incident, the juvenile court may have jurisdiction
22 of both matters: PROVIDED FURTHER, That the jurisdiction under this
23 subsection does not constitute "transfer" or a "decline" for purposes
24 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,
25 That courts of limited jurisdiction which confine juveniles for an
26 alleged offense or infraction may place juveniles in juvenile detention
27 facilities under an agreement with the officials responsible for the
28 administration of the juvenile detention facility in RCW 13.04.035 and
29 13.20.060;

30 (iv) The alleged offense is a traffic or civil infraction, a
31 violation of compulsory school attendance provisions under chapter
32 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
33 assumed concurrent jurisdiction over those offenses as provided in RCW
34 13.04.0301; ((~~or~~))

35 (v) The juvenile is sixteen or seventeen years old and the alleged
36 offense is:

37 (A) A serious violent offense as defined in RCW 9.94A.030;

1 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile
2 has a criminal history consisting of: (I) One or more prior serious
3 violent offenses; (II) two or more prior violent offenses; or (III)
4 three or more of any combination of the following offenses: Any class
5 A felony, any class B felony, vehicular assault, or manslaughter in the
6 second degree, all of which must have been committed after the
7 juvenile's thirteenth birthday and prosecuted separately;

8 (C) Robbery in the first degree, rape of a child in the first
9 degree, or drive-by shooting, committed on or after July 1, 1997;

10 (D) Burglary in the first degree committed on or after July 1,
11 1997, and the juvenile has a criminal history consisting of one or more
12 prior felony or misdemeanor offenses; or

13 (E) Any violent offense as defined in RCW 9.94A.030 committed on or
14 after July 1, 1997, and the juvenile is alleged to have been armed with
15 a firearm; or

16 (vi) The alleged offense is vehicular assault under RCW
17 46.61.522(1)(b) or vehicular homicide under RCW 46.61.520.

18 In such a case the adult criminal court shall have exclusive
19 original jurisdiction.

20 If the juvenile challenges the state's determination of the
21 juvenile's criminal history under (e)(v) of this subsection, the state
22 may establish the offender's criminal history by a preponderance of the
23 evidence. If the criminal history consists of adjudications entered
24 upon a plea of guilty, the state shall not bear a burden of
25 establishing the knowing and voluntariness of the plea;

26 (f) Under the interstate compact on juveniles as provided in
27 chapter 13.24 RCW;

28 (g) Relating to termination of a diversion agreement under RCW
29 13.40.080, including a proceeding in which the divertee has attained
30 eighteen years of age;

31 (h) Relating to court validation of a voluntary consent to an out-
32 of-home placement under chapter 13.34 RCW, by the parent or Indian
33 custodian of an Indian child, except if the parent or Indian custodian
34 and child are residents of or domiciled within the boundaries of a
35 federally recognized Indian reservation over which the tribe exercises
36 exclusive jurisdiction;

37 (i) Relating to petitions to compel disclosure of information filed

1 by the department of social and health services pursuant to RCW
2 74.13.042; and

3 (j) Relating to judicial determinations and permanency planning
4 hearings involving developmentally disabled children who have been
5 placed in out-of-home care pursuant to a voluntary placement agreement
6 between the child's parent, guardian, or legal custodian and the
7 department of social and health services.

8 (2) The family court shall have concurrent original jurisdiction
9 with the juvenile court over all proceedings under this section if the
10 superior court judges of a county authorize concurrent jurisdiction as
11 provided in RCW 26.12.010.

12 (3) The juvenile court shall have concurrent original jurisdiction
13 with the family court over child custody proceedings under chapter
14 26.10 RCW as provided for in RCW 13.34.155.

15 (4) A juvenile subject to adult superior court jurisdiction under
16 subsection (1)(e)(i) through (v) of this section, who is detained
17 pending trial, may be detained in a detention facility as defined in
18 RCW 13.40.020 pending sentencing or a dismissal.

19 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2004.

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