

CERTIFICATION OF ENROLLMENT  
**SECOND SUBSTITUTE SENATE BILL 6460**

Chapter 123, Laws of 2006

59th Legislature  
2006 Regular Session

CRIME--SEXUAL MOTIVATION ENHANCEMENT

EFFECTIVE DATE: 7/1/06

Passed by the Senate February 9, 2006  
YEAS 42 NAYS 6

BRAD OWEN

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**President of the Senate**

Passed by the House March 3, 2006  
YEAS 95 NAYS 3

FRANK CHOPP

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**Speaker of the House of Representatives**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 6460** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

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**Secretary**

Approved March 20, 2006.

FILED

March 20, 2006 - 11:12 a.m.

CHRISTINE GREGOIRE

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**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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SECOND SUBSTITUTE SENATE BILL 6460

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Passed Legislature - 2006 Regular Session

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Stevens, McCaslin, McAuliffe, Keiser, Rasmussen, Benton, Roach and Oke; by request of Attorney General)

READ FIRST TIME 02/7/06.

1 AN ACT Relating to penalties for crimes committed with sexual  
2 motivation; amending RCW 9.94A.533 and 9.94A.835; prescribing  
3 penalties; creating a new section; 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 years shall be added to the standard sentence  
14 range for vehicular homicide committed while under the influence of  
15 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
16 prior offense as defined in RCW 46.61.5055.

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

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

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

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

1 (iv) If the offender is being sentenced for any sexual motivation  
2 enhancements under (i), (ii), and/or (iii) of this subsection and the  
3 offender has previously been sentenced for any sexual motivation  
4 enhancements on or after the effective date of this section, under (i),  
5 (ii), and/or (iii) of this subsection, all sexual motivation  
6 enhancements under this subsection shall be twice the amount of the  
7 enhancement listed;

8 (b) Notwithstanding any other provision of law, all sexual  
9 motivation enhancements under this subsection are mandatory, shall be  
10 served in total confinement, and shall run consecutively to all other  
11 sentencing provisions, including other sexual motivation enhancements,  
12 for all offenses sentenced under this chapter. However, whether or not  
13 a 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 (c) The sexual motivation enhancements in this subsection apply to  
17 all felony crimes;

18 (d) If the standard sentence range under this subsection exceeds  
19 the statutory maximum sentence for the offense, the statutory maximum  
20 sentence shall be the presumptive sentence unless the offender is a  
21 persistent offender. If the addition of a sexual motivation  
22 enhancement increases the sentence so that it would exceed the  
23 statutory maximum for the offense, the portion of the sentence  
24 representing the enhancement may not be reduced;

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

28 (f) Nothing in this subsection prevents a sentencing court from  
29 imposing a sentence outside the standard sentence range pursuant to RCW  
30 9.94A.535.

31 **Sec. 2.** RCW 9.94A.835 and 1999 c 143 s 11 are each amended to read  
32 as follows:

33 (1) The prosecuting attorney shall file a special allegation of  
34 sexual motivation in every criminal case, felony, gross misdemeanor, or  
35 misdemeanor, other than sex offenses as defined in RCW  
36 9.94A.030(~~(+33+)~~) (38) (a) or (c) when sufficient admissible evidence  
37 exists, which, when considered with the most plausible, reasonably

1 foreseeable defense that could be raised under the evidence, would  
2 justify a finding of sexual motivation by a reasonable and objective  
3 fact-finder.

4 (2) In a criminal case wherein there has been a special allegation  
5 the state shall prove beyond a reasonable doubt that the accused  
6 committed the crime with a sexual motivation. The court shall make a  
7 finding of fact of whether or not a sexual motivation was present at  
8 the time of the commission of the crime, or if a jury trial is had, the  
9 jury shall, if it finds the defendant guilty, also find a special  
10 verdict as to whether or not the defendant committed the crime with a  
11 sexual motivation. This finding shall not be applied to sex offenses  
12 as defined in RCW 9.94A.030(~~(+33+)~~) (38) (a) or (c).

13 (3) The prosecuting attorney shall not withdraw the special  
14 allegation of sexual motivation without approval of the court through  
15 an order of dismissal of the special allegation. The court shall not  
16 dismiss this special allegation unless it finds that such an order is  
17 necessary to correct an error in the initial charging decision or  
18 unless there are evidentiary problems which make proving the special  
19 allegation doubtful.

20 NEW SECTION. Sec. 3. If specific funding for the purposes of this  
21 act, referencing this act by bill or chapter number, is not provided by  
22 June 30, 2006, in the omnibus appropriations act, this act is null and  
23 void.

24 NEW SECTION. Sec. 4. This act takes effect July 1, 2006.  
Passed by the Senate February 9, 2006.  
Passed by the House March 3, 2006.  
Approved by the Governor March 20, 2006.  
Filed in Office of Secretary of State March 20, 2006.