

SHB 1251 - H AMD 58

By Representative Warnick

WITHDRAWN 03/09/2007

1 On page 7, after line 28, insert the following:

2 NEW SECTION. **Sec. 9.** A new section is added to chapter 9.94A RCW  
3 to 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. 10.** 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

1 finding by a reasonable and objective fact-finder that the damage to  
2 the victim from whom the property was stolen greatly exceeds the value  
3 of the stolen property.

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

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

19 **Sec. 11.** RCW 9.94A.533 and 2006 c 339 s 301 and 2006 c 123 s 1 are  
20 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

33 (f) The firearm enhancements in this section shall apply to all  
34 felony crimes except the following: Possession of a machine gun,  
35 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
36 unlawful possession of a firearm in the first and second degree, and  
37 use of a machine gun in a felony;

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

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

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

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

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

35 (d) If the offender is being sentenced under (a), (b), and/or (c)  
36 of this subsection for any deadly weapon enhancements and the offender  
37 has previously been sentenced for any deadly weapon enhancements after  
38 July 23, 1995, under (a), (b), and/or (c) of this subsection or

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

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

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

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

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

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

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

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

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

5 (6) An additional twenty-four months shall be added to the standard  
6 sentence range for any ranked offense involving a violation of chapter  
7 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
8 9.94A.605. All enhancements under this subsection shall run  
9 consecutively to all other sentencing provisions, for all offenses  
10 sentenced under this chapter.

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

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

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

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

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

36 (iv) If the offender is being sentenced for any sexual motivation  
37 enhancements under (i), (ii), and/or (iii) of this subsection and the  
38 offender has previously been sentenced for any sexual motivation

1 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of  
2 this subsection, all sexual motivation enhancements under this  
3 subsection shall be twice the amount of the enhancement listed;

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

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

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

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

24 (f) Nothing in this subsection prevents a sentencing court from  
25 imposing a sentence outside the standard sentence range pursuant to RCW  
26 9.94A.535.

27 (9) An additional twelve months and one day shall be added to the  
28 standard sentence range for theft in the first or second degree when  
29 there has been a special verdict or finding that the damage to the  
30 victim greatly exceeds the value of the stolen property under section  
31 9 of this act.

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

37 Renumber the remaining sections consecutively, correct any internal

1 references accordingly, and correct the title.

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.

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