
SUBSTITUTE SENATE BILL 5120

State of Washington

67th Legislature

2021 Regular Session

By Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Das, Hasegawa, Lias, Lovelett, Mullet, Nguyen, Robinson, Saldaña, and Wilson, C.)

READ FIRST TIME 01/25/21.

1 AN ACT Relating to the criminal sentencing of youth and young
2 adults; reenacting and amending RCW 9.94A.533; adding a new section
3 to chapter 9.94A RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature declares that children are
6 different and finds that a scientific consensus has developed that
7 demonstrates that young people continue to develop neurologically
8 until age 26. The legislature finds that until then, young people are
9 less able to make decisions for themselves, are more impulsive, and
10 more susceptible to peer pressure. The legislature finds that as a
11 result, the Washington state supreme court has held that judges, when
12 sentencing individuals in adult court for offenses committed as
13 youth, must consider the mitigating factors relating to their youth
14 and have full discretion to impose any lesser sentence.

15 **Sec. 2.** RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are
16 each reenacted and amended to read as follows:

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

19 (2) Regardless of any provisions in this section, if a person is
20 being sentenced in adult court for a crime committed under age 18,

1 the court must consider the mitigating factors of youth and the court
2 has full discretion to depart from mandatory sentencing enhancements,
3 mandatory minimums, and the standard range sentence to impose any
4 lesser sentence.

5 (3) For persons convicted of the anticipatory offenses of
6 criminal attempt, solicitation, or conspiracy under chapter 9A.28
7 RCW, the standard sentence range is determined by locating the
8 sentencing grid sentence range defined by the appropriate offender
9 score and the seriousness level of the completed crime, and
10 multiplying the range by ~~((seventy-five))~~ 75 percent.

11 ~~((+3))~~ (4) The following additional times shall be added to the
12 standard sentence range for felony crimes committed after July 23,
13 1995, if the offender or an accomplice was armed with a firearm as
14 defined in RCW 9.41.010 and the offender is being sentenced for one
15 of the crimes listed in this subsection as eligible for any firearm
16 enhancements based on the classification of the completed felony
17 crime. If the offender is being sentenced for more than one offense,
18 the firearm enhancement or enhancements must be added to the total
19 period of confinement for all offenses, regardless of which
20 underlying offense is subject to a firearm enhancement. If the
21 offender or an accomplice was armed with a firearm as defined in RCW
22 9.41.010 and the offender is being sentenced for an anticipatory
23 offense under chapter 9A.28 RCW to commit one of the crimes listed in
24 this subsection as eligible for any firearm enhancements, the
25 following additional times shall be added to the standard sentence
26 range determined under subsection ~~((+2))~~ (3) of this section based
27 on the felony crime of conviction as classified under RCW 9A.28.020:

28 (a) Five years for any felony defined under any law as a class A
29 felony or with a statutory maximum sentence of at least ~~((twenty))~~ 20
30 years, or both, and not covered under (f) of this subsection;

31 (b) Three years for any felony defined under any law as a class B
32 felony or with a statutory maximum sentence of ~~((ten))~~ 10 years, or
33 both, and not covered under (f) of this subsection;

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

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

1 subsection or subsection (~~(4)~~) (5)(a), (b), and/or (c) of this
2 section, or both, all firearm enhancements under this subsection
3 shall be twice the amount of the enhancement listed;

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

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

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

14 (f) The firearm enhancements in this section shall apply to all
15 felony crimes except the following: Possession of a machine gun or
16 bump-fire stock, possessing a stolen firearm, drive-by shooting,
17 theft of a firearm, unlawful possession of a firearm in the first and
18 second degree, and use of a machine gun or bump-fire stock in a
19 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 firearm 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 (~~(4)~~) (5) The following additional times shall be added to the
28 standard sentence range for felony crimes committed after July 23,
29 1995, if the offender or an accomplice was armed with a deadly weapon
30 other than a firearm as defined in RCW 9.41.010 and the offender is
31 being sentenced for one of the crimes listed in this subsection as
32 eligible for any deadly weapon enhancements based on the
33 classification of the completed felony crime. If the offender is
34 being sentenced for more than one offense, the deadly weapon
35 enhancement or enhancements must be added to the total period of
36 confinement for all offenses, regardless of which underlying offense
37 is subject to a deadly weapon enhancement. If the offender or an
38 accomplice was armed with a deadly weapon other than a firearm as
39 defined in RCW 9.41.010 and the offender is being sentenced for an
40 anticipatory offense under chapter 9A.28 RCW to commit one of the

1 crimes listed in this subsection as eligible for any deadly weapon
2 enhancements, the following additional times shall be added to the
3 standard sentence range determined under subsection (~~((2))~~) (3) of
4 this section based on the felony crime of conviction as classified
5 under RCW 9A.28.020:

6 (a) Two years for any felony defined under any law as a class A
7 felony or with a statutory maximum sentence of at least (~~(twenty)~~) 20
8 years, or both, and not covered under (f) of this subsection;

9 (b) One year for any felony defined under any law as a class B
10 felony or with a statutory maximum sentence of (~~(ten)~~) 10 years, or
11 both, and not covered under (f) of this subsection;

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

15 (d) If the offender is being sentenced under (a), (b), and/or (c)
16 of this subsection for any deadly weapon enhancements and the
17 offender has previously been sentenced for any deadly weapon
18 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
19 subsection or subsection (~~((3))~~) (4)(a), (b), and/or (c) of this
20 section, or both, all deadly weapon enhancements under this
21 subsection shall be twice the amount of the enhancement listed;

22 (e) Notwithstanding any other provision of law, all deadly weapon
23 enhancements under this section are mandatory, shall be served in
24 total confinement, and shall run consecutively to all other
25 sentencing provisions, including other firearm or deadly weapon
26 enhancements, for all offenses sentenced under this chapter. However,
27 whether or not a mandatory minimum term has expired, an offender
28 serving a sentence under this subsection may be:

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

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

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

38 (g) If the standard sentence range under this section exceeds the
39 statutory maximum sentence for the offense, the statutory maximum
40 sentence shall be the presumptive sentence unless the offender is a

1 persistent offender. If the addition of a deadly weapon enhancement
2 increases the sentence so that it would exceed the statutory maximum
3 for the offense, the portion of the sentence representing the
4 enhancement may not be reduced.

5 ~~((+5))~~ (6) The following additional times shall be added to the
6 standard sentence range if the offender or an accomplice committed
7 the offense while in a county jail or state correctional facility and
8 the offender is being sentenced for one of the crimes listed in this
9 subsection. If the offender or an accomplice committed one of the
10 crimes listed in this subsection while in a county jail or state
11 correctional facility, and the offender is being sentenced for an
12 anticipatory offense under chapter 9A.28 RCW to commit one of the
13 crimes listed in this subsection, the following additional times
14 shall be added to the standard sentence range determined under
15 subsection ~~((+2))~~ (3) of this section:

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

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

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

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

24 ~~((+6))~~ (7) An additional ~~((twenty-four))~~ 24 months shall be
25 added to the standard sentence range for any ranked offense involving
26 a violation of chapter 69.50 RCW if the offense was also a violation
27 of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection
28 shall run consecutively to all other sentencing provisions, for all
29 offenses sentenced under this chapter.

30 ~~((+7))~~ (8) An additional two years shall be added to the
31 standard sentence range for vehicular homicide committed while under
32 the influence of intoxicating liquor or any drug as defined by RCW
33 46.61.502 for each prior offense as defined in RCW 46.61.5055.

34 Notwithstanding any other provision of law, all impaired driving
35 enhancements under this subsection are mandatory, shall be served in
36 total confinement, and shall run consecutively to all other
37 sentencing provisions, including other impaired driving enhancements,
38 for all offenses sentenced under this chapter.

1 An offender serving a sentence under this subsection may be
2 granted an extraordinary medical placement when authorized under RCW
3 9.94A.728(1)(c).

4 ~~((+8))~~ (9)(a) The following additional times shall be added to
5 the standard sentence range for felony crimes committed on or after
6 July 1, 2006, if the offense was committed with sexual motivation, as
7 that term is defined in RCW 9.94A.030. If the offender is being
8 sentenced for more than one offense, the sexual motivation
9 enhancement must be added to the total period of total confinement
10 for all offenses, regardless of which underlying offense is subject
11 to a sexual motivation enhancement. If the offender committed the
12 offense with sexual motivation and the offender is being sentenced
13 for an anticipatory offense under chapter 9A.28 RCW, the following
14 additional times shall be added to the standard sentence range
15 determined under subsection ~~((+2))~~ (3) of this section based on the
16 felony crime of conviction as classified under RCW 9A.28.020:

17 (i) Two years for any felony defined under the law as a class A
18 felony or with a statutory maximum sentence of at least ~~((twenty))~~ 20
19 years, or both;

20 (ii) Eighteen months for any felony defined under any law as a
21 class B felony or with a statutory maximum sentence of ~~((ten))~~ 10
22 years, or both;

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

25 (iv) If the offender is being sentenced for any sexual motivation
26 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
27 the offender has previously been sentenced for any sexual motivation
28 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
29 (iii) of this subsection, all sexual motivation enhancements under
30 this subsection shall be twice the amount of the enhancement listed;

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

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

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

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

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

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

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

16 ~~((+9))~~ (10) An additional one-year enhancement shall be added to
17 the standard sentence range for the felony crimes of RCW 9A.44.073,
18 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
19 or after July 22, 2007, if the offender engaged, agreed, or offered
20 to engage the victim in the sexual conduct in return for a fee. If
21 the offender is being sentenced for more than one offense, the
22 one-year enhancement must be added to the total period of total
23 confinement for all offenses, regardless of which underlying offense
24 is subject to the enhancement. If the offender is being sentenced for
25 an anticipatory offense for the felony crimes of RCW 9A.44.073,
26 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
27 offender attempted, solicited another, or conspired to engage, agree,
28 or offer to engage the victim in the sexual conduct in return for a
29 fee, an additional one-year enhancement shall be added to the
30 standard sentence range determined under subsection ~~((+2))~~ (3) of
31 this section. For purposes of this subsection, "sexual conduct" means
32 sexual intercourse or sexual contact, both as defined in chapter
33 9A.44 RCW.

34 ~~((+10))~~ (11)(a) For a person age ~~((eighteen))~~ 18 or older
35 convicted of any criminal street gang-related felony offense for
36 which the person compensated, threatened, or solicited a minor in
37 order to involve the minor in the commission of the felony offense,
38 the standard sentence range is determined by locating the sentencing
39 grid sentence range defined by the appropriate offender score and the
40 seriousness level of the completed crime, and multiplying the range

1 by (~~one hundred twenty-five~~) 125 percent. If the standard sentence
2 range under this subsection exceeds the statutory maximum sentence
3 for the offense, the statutory maximum sentence is the presumptive
4 sentence unless the offender is a persistent offender.

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

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

12 (~~(11)~~) (12) An additional (~~twelve~~) 12 months and one day
13 shall be added to the standard sentence range for a conviction of
14 attempting to elude a police vehicle as defined by RCW 46.61.024, if
15 the conviction included a finding by special allegation of
16 endangering one or more persons under RCW 9.94A.834.

17 (~~(12)~~) (13) An additional (~~twelve~~) 12 months shall be added
18 to the standard sentence range for an offense that is also a
19 violation of RCW 9.94A.831.

20 (~~(13)~~) (14) An additional (~~twelve~~) 12 months shall be added
21 to the standard sentence range for vehicular homicide committed while
22 under the influence of intoxicating liquor or any drug as defined by
23 RCW 46.61.520 or for vehicular assault committed while under the
24 influence of intoxicating liquor or any drug as defined by RCW
25 46.61.522, or for any felony driving under the influence (RCW
26 46.61.502(6)) or felony physical control under the influence (RCW
27 46.61.504(6)) for each child passenger under the age of (~~sixteen~~)
28 16 who is an occupant in the defendant's vehicle. These enhancements
29 shall be mandatory, shall be served in total confinement, and shall
30 run consecutively to all other sentencing provisions, including other
31 minor child enhancements, for all offenses sentenced under this
32 chapter. If the addition of a minor child enhancement increases the
33 sentence so that it would exceed the statutory maximum for the
34 offense, the portion of the sentence representing the enhancement
35 shall be mandatory, shall be served in total confinement, and shall
36 run consecutively to all other sentencing provisions.

37 (~~(14)~~) (15) An additional (~~twelve~~) 12 months shall be added
38 to the standard sentence range for an offense that is also a
39 violation of RCW 9.94A.832.

1 (~~(15) Regardless of any provisions in this section, if a person~~
2 ~~is being sentenced in adult court for a crime committed under age~~
3 ~~eighteen, the court has full discretion to depart from mandatory~~
4 ~~sentencing enhancements and to take the particular circumstances~~
5 ~~surrounding the defendant's youth into account.))~~

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A
7 RCW to read as follows:

8 (1) In any criminal case where an offender was sentenced, on or
9 before March 2, 2017, in adult court for a crime that occurred under
10 the age of 18, the offender must have a resentencing hearing upon
11 their motion for relief from sentence to the original sentencing
12 court.

13 (2) The sentencing court shall grant the motion for resentencing
14 if it finds that an offender was sentenced in adult court for a crime
15 that occurred under the age of 18.

16 (3) At resentencing, the court shall consider the mitigating
17 factors relating to the offender's youth and the court has full
18 discretion to impose any lesser sentence.

19 NEW SECTION. **Sec. 4.** This act applies to all causes of action
20 commenced on or after the effective date of this section, regardless
21 of when the cause of action arose. To this extent, this act applies
22 retroactively, but in all other respects it applies prospectively.

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