

E2SHB 3254 - S AMD TO TRAN COMM AMD (S-5957.1/08) **269**
By Senator Brandland

WITHDRAWN 03/07/2008

1 On page 34, after line 7 of the amendment, insert the following:

2 "Sec. 15. RCW 9.94A.533 and 2007 c 368 s 9 are each amended to
3 read as follows:

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

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

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

29 (a) Five years for any felony defined under any law as a class A

1 felony or with a statutory maximum sentence of at least twenty years,
2 or both, and not covered under (f) of this subsection;

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

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

9 (d) If the offender is being sentenced for any firearm enhancements
10 under (a), (b), and/or (c) of this subsection and the offender has
11 previously been sentenced for any deadly weapon enhancements after July
12 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
13 (4)(a), (b), and/or (c) of this section, or both, all firearm
14 enhancements under this subsection shall be twice the amount of the
15 enhancement listed;

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

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

29 (g) If the standard sentence range under this section exceeds the
30 statutory maximum sentence for the offense, the statutory maximum
31 sentence shall be the presumptive sentence unless the offender is a
32 persistent offender. If the addition of a firearm enhancement
33 increases the sentence so that it would exceed the statutory maximum
34 for the offense, the portion of the sentence representing the
35 enhancement may not be reduced.

36 (4) The following additional times shall be added to the standard
37 sentence range for felony crimes committed after July 23, 1995, if the
38 offender or an accomplice was armed with a deadly weapon other than a

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

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

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

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

25 (d) If the offender is being sentenced under (a), (b), and/or (c)
26 of this subsection for any deadly weapon enhancements and the offender
27 has previously been sentenced for any deadly weapon enhancements after
28 July 23, 1995, under (a), (b), and/or (c) of this subsection or
29 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
30 weapon enhancements under this subsection shall be twice the amount of
31 the enhancement listed;

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

1 under this subsection may be granted an extraordinary medical placement
2 when authorized under RCW 9.94A.728(4);

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

8 (g) If the standard sentence range under this section exceeds the
9 statutory maximum sentence for the offense, the statutory maximum
10 sentence shall be the presumptive sentence unless the offender is a
11 persistent offender. If the addition of a deadly weapon enhancement
12 increases the sentence so that it would exceed the statutory maximum
13 for the offense, the portion of the sentence representing the
14 enhancement may not be reduced.

15 (5) The following additional times shall be added to the standard
16 sentence range if the offender or an accomplice committed the offense
17 while in a county jail or state correctional facility and the offender
18 is being sentenced for one of the crimes listed in this subsection. If
19 the offender or an accomplice committed one of the crimes listed in
20 this subsection while in a county jail or state correctional facility,
21 and the offender is being sentenced for an anticipatory offense under
22 chapter 9A.28 RCW to commit one of the crimes listed in this
23 subsection, the following additional times shall be added to the
24 standard sentence range determined under subsection (2) of this
25 section:

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

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

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

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

34 (6) An additional twenty-four months shall be added to the standard
35 sentence range for any ranked offense involving a violation of chapter
36 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
37 9.94A.605. All enhancements under this subsection shall run

1 consecutively to all other sentencing provisions, for all offenses
2 sentenced under this chapter.

3 (7) An additional two years shall be added to the standard sentence
4 range for vehicular homicide committed while under the influence of
5 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
6 prior offense as defined in RCW 46.61.5055. This enhancement is
7 mandatory, shall be served in total confinement, and shall run
8 consecutively to all other sentencing provisions, including other
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 granted an
12 extraordinary medical placement when authorized under RCW 9.94A.728(4).

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

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

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

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

34 (iv) If the offender is being sentenced for any sexual motivation
35 enhancements under (i), (ii), and/or (iii) of this subsection and the
36 offender has previously been sentenced for any sexual motivation
37 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of

1 this subsection, all sexual motivation enhancements under this
2 subsection shall be twice the amount of the enhancement listed;

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

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

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

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

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

26 (9) An additional one-year enhancement shall be added to the
27 standard sentence range for the felony crimes of RCW 9A.44.073,
28 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
29 or after July 22, 2007, if the offender engaged, agreed, or offered to
30 engage the victim in the sexual conduct in return for a fee. If the
31 offender is being sentenced for more than one offense, the one-year
32 enhancement must be added to the total period of total confinement for
33 all offenses, regardless of which underlying offense is subject to the
34 enhancement. If the offender is being sentenced for an anticipatory
35 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
36 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
37 solicited another, or conspired to engage, agree, or offer to engage
38 the victim in (~~the~~) the sexual conduct in return for a fee, an

1 additional one-year enhancement shall be added to the standard sentence
2 range determined under subsection (2) of this section. For purposes of
3 this subsection, "sexual conduct" means sexual intercourse or sexual
4 contact, both as defined in chapter 9A.44 RCW.

5 **Sec. 16.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to
6 read as follows:

7 No person serving a sentence imposed pursuant to this chapter and
8 committed to the custody of the department shall leave the confines of
9 the correctional facility or be released prior to the expiration of the
10 sentence except as follows:

11 (1) Except as otherwise provided for in subsection (2) of this
12 section, the term of the sentence of an offender committed to a
13 correctional facility operated by the department may be reduced by
14 earned release time in accordance with procedures that shall be
15 developed and promulgated by the correctional agency having
16 jurisdiction in which the offender is confined. The earned release
17 time shall be for good behavior and good performance, as determined by
18 the correctional agency having jurisdiction. The correctional agency
19 shall not credit the offender with earned release credits in advance of
20 the offender actually earning the credits. Any program established
21 pursuant to this section shall allow an offender to earn early release
22 credits for presentence incarceration. If an offender is transferred
23 from a county jail to the department, the administrator of a county
24 jail facility shall certify to the department the amount of time spent
25 in custody at the facility and the amount of earned release time. An
26 offender who has been convicted of a felony committed after July 23,
27 1995, that involves any applicable deadly weapon enhancements under RCW
28 9.94A.533 (3) or (4), or both, shall not receive any good time credits
29 or earned release time for that portion of his or her sentence that
30 results from any deadly weapon enhancements. An offender convicted of
31 vehicular homicide committed while under the influence of intoxicating
32 liquor or any drug that involves a sentence enhancement under RCW
33 9.94A.533(7) may not receive any earned early release time for the
34 portion of his or her sentence that results from the enhancement.

35 (a) In the case of an offender convicted of a serious violent
36 offense, or a sex offense that is a class A felony, committed on or
37 after July 1, 1990, and before July 1, 2003, the aggregate earned

1 release time may not exceed fifteen percent of the sentence. In the
2 case of an offender convicted of a serious violent offense, or a sex
3 offense that is a class A felony, committed on or after July 1, 2003,
4 the aggregate earned release time may not exceed ten percent of the
5 sentence.

6 (b)(i) In the case of an offender who qualifies under (b)(ii) of
7 this subsection, the aggregate earned release time may not exceed fifty
8 percent of the sentence.

9 (ii) An offender is qualified to earn up to fifty percent of
10 aggregate earned release time under this subsection (1)(b) if he or
11 she:

12 (A) Is classified in one of the two lowest risk categories under
13 (b)(iii) of this subsection;

14 (B) Is not confined pursuant to a sentence for:

15 (I) A sex offense;

16 (II) A violent offense;

17 (III) A crime against persons as defined in RCW 9.94A.411;

18 (IV) A felony that is domestic violence as defined in RCW
19 10.99.020;

20 (V) A violation of RCW 9A.52.025 (residential burglary);

21 (VI) A violation of, or an attempt, solicitation, or conspiracy to
22 violate, RCW 69.50.401 by manufacture or delivery or possession with
23 intent to deliver methamphetamine; or

24 (VII) A violation of, or an attempt, solicitation, or conspiracy to
25 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

26 (C) Has no prior conviction for:

27 (I) A sex offense;

28 (II) A violent offense;

29 (III) A crime against persons as defined in RCW 9.94A.411;

30 (IV) A felony that is domestic violence as defined in RCW
31 10.99.020;

32 (V) A violation of RCW 9A.52.025 (residential burglary);

33 (VI) A violation of, or an attempt, solicitation, or conspiracy to
34 violate, RCW 69.50.401 by manufacture or delivery or possession with
35 intent to deliver methamphetamine; or

36 (VII) A violation of, or an attempt, solicitation, or conspiracy to
37 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

1 (D) Participates in programming or activities as directed by the
2 offender's individual reentry plan as provided under RCW 72.09.270 to
3 the extent that such programming or activities are made available by
4 the department; and

5 (E) Has not committed a new felony after July 22, 2007, while under
6 community supervision, community placement, or community custody.

7 (iii) For purposes of determining an offender's eligibility under
8 this subsection (1)(b), the department shall perform a risk assessment
9 of every offender committed to a correctional facility operated by the
10 department who has no current or prior conviction for a sex offense, a
11 violent offense, a crime against persons as defined in RCW 9.94A.411,
12 a felony that is domestic violence as defined in RCW 10.99.020, a
13 violation of RCW 9A.52.025 (residential burglary), a violation of, or
14 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
15 manufacture or delivery or possession with intent to deliver
16 methamphetamine, or a violation of, or an attempt, solicitation, or
17 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
18 substance to a minor). The department must classify each assessed
19 offender in one of four risk categories between highest and lowest
20 risk.

21 (iv) The department shall recalculate the earned release time and
22 reschedule the expected release dates for each qualified offender under
23 this subsection (1)(b).

24 (v) This subsection (1)(b) applies retroactively to eligible
25 offenders serving terms of total confinement in a state correctional
26 facility as of July 1, 2003.

27 (vi) This subsection (1)(b) does not apply to offenders convicted
28 after July 1, 2010.

29 (c) In no other case shall the aggregate earned release time exceed
30 one-third of the total sentence;

31 (2)(a) A person convicted of a sex offense or an offense
32 categorized as a serious violent offense, assault in the second degree,
33 vehicular homicide, vehicular assault, assault of a child in the second
34 degree, any crime against persons where it is determined in accordance
35 with RCW 9.94A.602 that the offender or an accomplice was armed with a
36 deadly weapon at the time of commission, or any felony offense under
37 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become

1 eligible, in accordance with a program developed by the department, for
2 transfer to community custody status in lieu of earned release time
3 pursuant to subsection (1) of this section;

4 (b) A person convicted of a sex offense, a violent offense, any
5 crime against persons under RCW 9.94A.411(2), or a felony offense under
6 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
7 become eligible, in accordance with a program developed by the
8 department, for transfer to community custody status in lieu of earned
9 release time pursuant to subsection (1) of this section;

10 (c) The department shall, as a part of its program for release to
11 the community in lieu of earned release, require the offender to
12 propose a release plan that includes an approved residence and living
13 arrangement. All offenders with community placement or community
14 custody terms eligible for release to community custody status in lieu
15 of earned release shall provide an approved residence and living
16 arrangement prior to release to the community;

17 (d) The department may deny transfer to community custody status in
18 lieu of earned release time pursuant to subsection (1) of this section
19 if the department determines an offender's release plan, including
20 proposed residence location and living arrangements, may violate the
21 conditions of the sentence or conditions of supervision, place the
22 offender at risk to violate the conditions of the sentence, place the
23 offender at risk to reoffend, or present a risk to victim safety or
24 community safety. The department's authority under this section is
25 independent of any court-ordered condition of sentence or statutory
26 provision regarding conditions for community custody or community
27 placement;

28 (e) If the department denies transfer to community custody status
29 in lieu of earned early release pursuant to (d) of this subsection, the
30 department may transfer an offender to partial confinement in lieu of
31 earned early release up to three months. The three months in partial
32 confinement is in addition to that portion of the offender's term of
33 confinement that may be served in partial confinement as provided in
34 this section;

35 (f) An offender serving a term of confinement imposed under RCW
36 9.94A.670(4)(a) is not eligible for earned release credits under this
37 section;

1 (3) An offender may leave a correctional facility pursuant to an
2 authorized furlough or leave of absence. In addition, offenders may
3 leave a correctional facility when in the custody of a corrections
4 officer or officers;

5 (4)(a) The secretary may authorize an extraordinary medical
6 placement for an offender when all of the following conditions exist:

7 (i) The offender has a medical condition that is serious enough to
8 require costly care or treatment;

9 (ii) The offender poses a low risk to the community because he or
10 she is physically incapacitated due to age or the medical condition;
11 and

12 (iii) Granting the extraordinary medical placement will result in
13 a cost savings to the state.

14 (b) An offender sentenced to death or to life imprisonment without
15 the possibility of release or parole is not eligible for an
16 extraordinary medical placement.

17 (c) The secretary shall require electronic monitoring for all
18 offenders in extraordinary medical placement unless the electronic
19 monitoring equipment interferes with the function of the offender's
20 medical equipment or results in the loss of funding for the offender's
21 medical care. The secretary shall specify who shall provide the
22 monitoring services and the terms under which the monitoring shall be
23 performed.

24 (d) The secretary may revoke an extraordinary medical placement
25 under this subsection at any time;

26 (5) The governor, upon recommendation from the clemency and pardons
27 board, may grant an extraordinary release for reasons of serious health
28 problems, senility, advanced age, extraordinary meritorious acts, or
29 other extraordinary circumstances;

30 (6) No more than the final six months of the offender's term of
31 confinement may be served in partial confinement designed to aid the
32 offender in finding work and reestablishing himself or herself in the
33 community. This is in addition to that period of earned early release
34 time that may be exchanged for partial confinement pursuant to
35 subsection (2)(e) of this section;

36 (7) The governor may pardon any offender;

37 (8) The department may release an offender from confinement any

1 time within ten days before a release date calculated under this
2 section; and

3 (9) An offender may leave a correctional facility prior to
4 completion of his or her sentence if the sentence has been reduced as
5 provided in RCW 9.94A.870.

6 Notwithstanding any other provisions of this section, an offender
7 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
8 mandatory minimum sentence of total confinement shall not be released
9 from total confinement before the completion of the listed mandatory
10 minimum sentence for that felony crime of conviction unless allowed
11 under RCW 9.94A.540, however persistent offenders are not eligible for
12 extraordinary medical placement.

13 NEW SECTION. **Sec. 17.** Sections 15 and 16 of this act apply
14 prospectively only and not retroactively. Those provisions apply only
15 to convictions occurring on or after the effective date of this
16 section."

17 Renumber the remaining sections consecutively and correct any
18 internal references accordingly.

E2SHB 3254 - S AMD TO TRAN COMM AMD (S-5957.1/08)
By Senator Brandland

WITHDRAWN 03/07/2008

19 On page 34, line 16 of the title amendment, after "46.20.740,"
20 strike "and 46.61.5055" and insert "46.61.5055, 9.94A.533, and
21 9.94A.728"

22 On page 34, line 19 of the title amendment, after "creating" strike
23 "a new section" and insert "new sections"

EFFECT: Specifies that the two-year sentencing enhancement for

DUI-related vehicular homicide is not subject to earned early release time, and is mandatory, must be served in total confinement, and must run consecutive to all other sentences.

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