
HOUSE BILL 1732

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Manweller, Warnick, and Ross

Read first time 02/06/13. Referred to Committee on Public Safety.

1 AN ACT Relating to criminal street gang-related offenses; and
2 amending RCW 9.94A.533.

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

4 **Sec. 1.** RCW 9.94A.533 and 2012 c 42 s 3 are each amended to read
5 as follows:

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

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

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

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

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

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

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

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

28 (e) Notwithstanding any other provision of law, all firearm
29 enhancements under this section are mandatory, shall be served in total
30 confinement, and shall run consecutively to all other sentencing
31 provisions, including other firearm or deadly weapon enhancements, for
32 all offenses sentenced under this chapter. However, whether or not a
33 mandatory minimum term has expired, an offender serving a sentence
34 under this subsection may be granted an extraordinary medical placement
35 when authorized under RCW 9.94A.728(3);

36 (f) The firearm enhancements in this section shall apply to all
37 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(3);

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.827. All enhancements under this subsection shall run
13 consecutively to all other sentencing provisions, for all offenses
14 sentenced under this chapter.

15 (7) An additional two years shall be added to the standard sentence
16 range for vehicular homicide committed while under the influence of
17 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
18 prior offense as defined in RCW 46.61.5055. All enhancements under
19 this subsection shall be mandatory, shall be served in total
20 confinement, and shall run consecutively to all other sentencing
21 provisions.

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

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

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

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

6 (iv) If the offender is being sentenced for any sexual motivation
7 enhancements under (i), (ii), and/or (iii) of this subsection and the
8 offender has previously been sentenced for any sexual motivation
9 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
10 this subsection, all sexual motivation enhancements under this
11 subsection shall be twice the amount of the enhancement listed;

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

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

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

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

32 (f) Nothing in this subsection prevents a sentencing court from
33 imposing a sentence outside the standard sentence range pursuant to RCW
34 9.94A.535.

35 (9) An additional one-year enhancement shall be added to the
36 standard sentence range for the felony crimes of RCW 9A.44.073,
37 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
38 or after July 22, 2007, if the offender engaged, agreed, or offered to

1 engage the victim in the sexual conduct in return for a fee. If the
2 offender is being sentenced for more than one offense, the one-year
3 enhancement must be added to the total period of total confinement for
4 all offenses, regardless of which underlying offense is subject to the
5 enhancement. If the offender is being sentenced for an anticipatory
6 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
7 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
8 solicited another, or conspired to engage, agree, or offer to engage
9 the victim in the sexual conduct in return for a fee, an additional
10 one-year enhancement shall be added to the standard sentence range
11 determined under subsection (2) of this section. For purposes of this
12 subsection, "sexual conduct" means sexual intercourse or sexual
13 contact, both as defined in chapter 9A.44 RCW.

14 (10)(a) For a person age eighteen or older convicted of any
15 criminal street gang-related felony offense for which the person
16 compensated, threatened, or solicited a minor in order to involve the
17 minor in the commission of the felony offense, the standard sentence
18 range is determined by locating the sentencing grid sentence range
19 defined by the appropriate offender score and the seriousness level of
20 the completed crime, and multiplying the range by one hundred twenty-
21 five percent. If the standard sentence range under this subsection
22 exceeds the statutory maximum sentence for the offense, the statutory
23 maximum sentence is the presumptive sentence unless the offender is a
24 persistent offender.

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

28 (c) The increased penalty specified in (a) of this subsection is
29 unavailable in the event that the prosecution gives notice that it will
30 seek an exceptional sentence based on an aggravating factor under RCW
31 9.94A.535.

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

37 (12) An additional twelve months shall be added to the standard

1 sentence range for an offense that is also a violation of RCW
2 9.94A.831.

3 (13) An additional twelve months shall be added to the standard
4 sentence range for vehicular homicide committed while under the
5 influence of intoxicating liquor or any drug as defined by RCW
6 46.61.520 or for vehicular assault committed while under the influence
7 of intoxicating liquor or any drug as defined by RCW 46.61.522, or for
8 any felony driving under the influence (RCW 46.61.502(6)) or felony
9 physical control under the influence (RCW 46.61.504(6)) for each child
10 passenger under the age of sixteen who is an occupant in the
11 defendant's vehicle. These enhancements shall be mandatory, shall be
12 served in total confinement, and shall run consecutively to all other
13 sentencing provisions. If the addition of a minor child enhancement
14 increases the sentence so that it would exceed the statutory maximum
15 for the offense, the portion of the sentence representing the
16 enhancement may not be reduced.

17 (14)(a) The following additional times shall be added to the
18 standard sentence range for felony crimes, if the offender is being
19 sentenced for a criminal street gang-related offense as defined in RCW
20 9.94A.030, except if the sentencing enhancement described under
21 subsection (10) of this section applies. If the criminal street
22 gang-related offense is an anticipatory offense under chapter 9A.28
23 RCW, the following additional times shall be added to the standard
24 sentence range determined under subsection (2) of this section based on
25 the felony crime of conviction as classified under RCW 9A.28.020:

26 (i) Twenty-four months for any felony defined under any law as a
27 class A felony or with a statutory maximum sentence of at least twenty
28 years, 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) Twelve months for any felony defined under any law as a class
33 C felony or with a statutory maximum sentence of five years, or both;

34 (b) All criminal street gang-related sentencing enhancements under
35 this subsection are mandatory, shall be served in total confinement,
36 and shall run consecutively to all other sentencing provisions.
37 However, whether or not a mandatory minimum term has expired, an

1 offender serving a sentence under this subsection may be granted an
2 extraordinary medical placement when authorized under RCW 9.94A.728;

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

10 (d) The criminal street gang-related sentencing enhancement is
11 unavailable in the event that the prosecution gives notice that it will
12 seek an exceptional sentence based on the criminal street gang-related
13 aggravating factor provided by RCW 9.94A.535(3)(aa).

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