
SENATE BILL 6009

State of Washington

63rd Legislature

2014 Regular Session

By Senators Padden and O'Ban

Read first time 01/13/14. Referred to Committee on Law & Justice.

1 AN ACT Relating to a special allegation for habitual property
2 offenders; amending RCW 9.94A.533; adding a new section to chapter
3 9.94A RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
6 to read as follows:

7 (1) The prosecuting attorney may file a special allegation when
8 sufficient evidence exists to show that the accused is an habitual
9 property offender.

10 (2) In a criminal case in which there has been a special allegation
11 and the accused has been convicted of the underlying crime, the court
12 shall make a finding of fact prior to sentencing whether the person is
13 an habitual property offender based on the person's criminal history.
14 If the court finds by a preponderance of the evidence that the person
15 is an habitual property offender, the person shall be sentenced in
16 accordance with RCW 9.94A.533(15).

17 (3) For purposes of this section, a person is an habitual property
18 offender if:

1 (a) The present felony conviction for which the person is being
2 sentenced is for residential burglary, burglary in the second degree,
3 theft in the first degree, theft in the second degree, theft of a
4 firearm, unlawful issuance of checks or drafts, organized retail theft,
5 theft with special circumstances, or mail theft;

6 (b) The person has an offender score of nine points or higher; and

7 (c) At least nine of the points in the person's offender score
8 result from any combination of the following felony offenses:
9 Residential burglary, burglary in the second degree, theft in the first
10 degree, theft in the second degree, theft of a firearm, unlawful
11 issuance of checks or drafts, organized retail theft, theft with
12 special circumstances, or mail theft.

13 **Sec. 2.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to read
14 as follows:

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

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

23 (3) The following additional times shall be added to the standard
24 sentence range for felony crimes committed after July 23, 1995, if the
25 offender or an accomplice was armed with a firearm as defined in RCW
26 9.41.010 and the offender is being sentenced for one of the crimes
27 listed in this subsection as eligible for any firearm enhancements
28 based on the classification of the completed felony crime. If the
29 offender is being sentenced for more than one offense, the firearm
30 enhancement or enhancements must be added to the total period of
31 confinement for all offenses, regardless of which underlying offense is
32 subject to a firearm enhancement. If the offender or an accomplice was
33 armed with a firearm as defined in RCW 9.41.010 and the offender is
34 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
35 commit one of the crimes listed in this subsection as eligible for any
36 firearm enhancements, the following additional times shall be added to

1 the standard sentence range determined under subsection (2) of this
2 section based on the felony crime of conviction as classified under RCW
3 9A.28.020:

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

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

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

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

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

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

33 (g) If the standard sentence range under this section exceeds the
34 statutory maximum sentence for the offense, the statutory maximum
35 sentence shall be the presumptive sentence unless the offender is a
36 persistent offender. If the addition of a firearm enhancement
37 increases the sentence so that it would exceed the statutory maximum

1 for the offense, the portion of the sentence representing the
2 enhancement may not be reduced.

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

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

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

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

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

37 (e) Notwithstanding any other provision of law, all deadly weapon
38 enhancements under this section are mandatory, shall be served in total

1 confinement, and shall run consecutively to all other sentencing
2 provisions, including other firearm or deadly weapon enhancements, for
3 all offenses sentenced under this chapter. However, whether or not a
4 mandatory minimum term has expired, an offender serving a sentence
5 under this subsection may be granted an extraordinary medical placement
6 when authorized under RCW 9.94A.728(3);

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

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

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

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

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

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

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

1 (6) An additional twenty-four months shall be added to the standard
2 sentence range for any ranked offense involving a violation of chapter
3 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
4 9.94A.827. All enhancements under this subsection shall run
5 consecutively to all other sentencing provisions, for all offenses
6 sentenced under this chapter.

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

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

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

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

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

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

1 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii)
2 of 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(3);

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

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

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

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

20 (c) The increased penalty specified in (a) of this subsection is
21 unavailable in the event that the prosecution gives notice that it will
22 seek an exceptional sentence based on an aggravating factor under RCW
23 9.94A.535.

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

29 (12) An additional twelve months shall be added to the standard
30 sentence range for an offense that is also a violation of RCW
31 9.94A.831.

32 (13) An additional twelve months shall be added to the standard
33 sentence range for vehicular homicide committed while under the
34 influence of intoxicating liquor or any drug as defined by RCW
35 46.61.520 or for vehicular assault committed while under the influence
36 of intoxicating liquor or any drug as defined by RCW 46.61.522, or for
37 any felony driving under the influence (RCW 46.61.502(6)) or felony
38 physical control under the influence (RCW 46.61.504(6)) for each child

1 passenger under the age of sixteen who is an occupant in the
2 defendant's vehicle. These enhancements shall be mandatory, shall be
3 served in total confinement, and shall run consecutively to all other
4 sentencing provisions. If the addition of a minor child 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 (14) An additional twelve months shall be added to the standard
9 sentence range for an offense that is also a violation of RCW
10 9.94A.832.

11 (15)(a) The following additional times shall be added to the
12 standard sentence range if the court finds that the offender is an
13 habitual property offender pursuant to section 1 of this act:

14 (i) Twenty-four months if the offender is being sentenced for a
15 felony defined as a class B felony;

16 (ii) Twelve months if the offender is being sentenced for a felony
17 defined as a class C felony.

18 (b) A sentence imposed pursuant to this subsection is not to exceed
19 the statutory maximum for the crime as established in RCW 9A.20.021.

20 (c) Notwithstanding any other provision of law, all habitual
21 property offender enhancements imposed under this section are mandatory
22 and shall be served in total confinement. However, whether or not the
23 mandatory minimum term has expired, an offender serving a sentence
24 under this subsection may be granted an extraordinary medical placement
25 when authorized under RCW 9.94A.728(3).

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