

---

SENATE BILL 6009

---

State of Washington

63rd Legislature

2014 Regular Session

By Senator Padden

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).

--- END ---