
SENATE BILL 5120

State of Washington

67th Legislature

2021 Regular Session

By Senator Darneille

Prefiled 01/08/21.

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 a new section.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (f) The firearm enhancements in this section shall apply to all
38 felony crimes except the following: Possession of a machine gun or
39 bump-fire stock, possessing a stolen firearm, drive-by shooting,
40 theft of a firearm, unlawful possession of a firearm in the first and

1 second degree, and use of a machine gun or bump-fire stock in a
2 felony;

3 (g) If the standard sentence range under this section exceeds the
4 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 firearm enhancement
7 increases the sentence so that it would exceed the statutory maximum
8 for the offense, the portion of the sentence representing the
9 enhancement may not be reduced.

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

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

37 (d) If the offender is being sentenced under (a), (b), and/or (c)
38 of this subsection for any deadly weapon enhancements 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 (3)(a), (b), and/or (c) of this section, or
2 both, all deadly weapon enhancements under this subsection shall be
3 twice the amount of the enhancement listed;

4 (e) Notwithstanding any other provision of law, all deadly weapon
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 deadly weapon enhancements in this section shall apply to
15 all felony crimes except the following: Possession of a machine gun
16 or 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 deadly weapon 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 (5) The following additional times shall be added to the standard
28 sentence range if the offender or an accomplice committed the offense
29 while in a county jail or state correctional facility and the
30 offender is being sentenced for one of the crimes listed in this
31 subsection. If the offender or an accomplice committed one of the
32 crimes listed in this subsection while in a county jail or state
33 correctional facility, and the offender is being sentenced for an
34 anticipatory offense under chapter 9A.28 RCW to commit one of the
35 crimes listed in this subsection, the following additional times
36 shall be added to the standard sentence range determined under
37 subsection (2) of this section:

38 (a) Eighteen months for offenses committed under RCW 69.50.401(2)

39 (a) or (b) or 69.50.410;

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

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

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

7 (6) An additional (~~twenty-four~~) 24 months shall be added to the
8 standard sentence range for any ranked offense involving a violation
9 of chapter 69.50 RCW if the offense was also a violation of RCW
10 69.50.435 or 9.94A.827. All enhancements under this subsection shall
11 run consecutively to all other sentencing provisions, for all
12 offenses sentenced under this chapter.

13 (7) An additional two years shall be added to the standard
14 sentence range for vehicular homicide committed while under the
15 influence of intoxicating liquor or any drug as defined by RCW
16 46.61.502 for each prior offense as defined in RCW 46.61.5055.

17 Notwithstanding any other provision of law, all impaired driving
18 enhancements under this subsection are mandatory, shall be served in
19 total confinement, and shall run consecutively to all other
20 sentencing provisions, including other impaired driving enhancements,
21 for all offenses sentenced under this chapter.

22 An offender serving a sentence under this subsection may be
23 granted an extraordinary medical placement when authorized under RCW
24 9.94A.728(1)(c).

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

38 (i) Two years for any felony defined under the law as a class A
39 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
40 years, 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~~) 10
3 years, or 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 (a)(i), (ii), and/or (iii) of this subsection and
8 the offender has previously been sentenced for any sexual motivation
9 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
10 (iii) of this subsection, all sexual motivation enhancements under
11 this 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
16 enhancements, for all offenses sentenced under this chapter. However,
17 whether or not a mandatory minimum term has expired, an offender
18 serving a sentence under this subsection may be:

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

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

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

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

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

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

37 (9) An additional one-year enhancement shall be added to the
38 standard sentence range for the felony crimes of RCW 9A.44.073,
39 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
40 or after July 22, 2007, if the offender engaged, agreed, or offered

1 to engage the victim in the sexual conduct in return for a fee. If
2 the offender is being sentenced for more than one offense, the
3 one-year enhancement must be added to the total period of total
4 confinement for all offenses, regardless of which underlying offense
5 is subject to the enhancement. If the offender is being sentenced for
6 an anticipatory offense for the felony crimes of RCW 9A.44.073,
7 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
8 offender attempted, solicited another, or conspired to engage, agree,
9 or offer to engage the victim in the sexual conduct in return for a
10 fee, an additional one-year enhancement shall be added to the
11 standard sentence range determined under subsection (2) of this
12 section. For purposes of this subsection, "sexual conduct" means
13 sexual intercourse or sexual contact, both as defined in chapter
14 9A.44 RCW.

15 (10)(a) For a person age (~~(eighteen)~~) 18 or older convicted of
16 any criminal street gang-related felony offense for which the person
17 compensated, threatened, or solicited a minor in order to involve the
18 minor in the commission of the felony offense, the standard sentence
19 range is determined by locating the sentencing grid sentence range
20 defined by the appropriate offender score and the seriousness level
21 of the completed crime, and multiplying the range by (~~(one hundred~~
22 ~~twenty-five)~~) 125 percent. If the standard sentence range under this
23 subsection exceeds the statutory maximum sentence for the offense,
24 the statutory maximum sentence is the presumptive sentence unless the
25 offender is a persistent offender.

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

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

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

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

1 (13) An additional (~~twelve~~) 12 months shall be added to the
2 standard sentence range for vehicular homicide committed while under
3 the influence of intoxicating liquor or any drug as defined by RCW
4 46.61.520 or for vehicular assault committed while under the
5 influence of intoxicating liquor or any drug as defined by RCW
6 46.61.522, or for any felony driving under the influence (RCW
7 46.61.502(6)) or felony physical control under the influence (RCW
8 46.61.504(6)) for each child passenger under the age of (~~sixteen~~)
9 16 who is an occupant in the defendant's vehicle. These enhancements
10 shall be mandatory, shall be served in total confinement, and shall
11 run consecutively to all other sentencing provisions, including other
12 minor child enhancements, for all offenses sentenced under this
13 chapter. If the addition of a minor child enhancement increases the
14 sentence so that it would exceed the statutory maximum for the
15 offense, the portion of the sentence representing the enhancement
16 shall be mandatory, shall be served in total confinement, and shall
17 run consecutively to all other sentencing provisions.

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

21 (15) Regardless of any provisions in this section, if a person is
22 being sentenced in adult court for a crime committed under age
23 (~~eighteen~~) 18, the court must consider the mitigating factors
24 relating to their youth and the court has full discretion to (~~depart~~
25 ~~from mandatory sentencing enhancements and to take the particular~~
26 ~~circumstances surrounding the defendant's youth into account~~) impose
27 any lesser sentence.

28 NEW SECTION. Sec. 2. A new section is added to chapter 9.94A
29 RCW to read as follows:

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

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

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

4 NEW SECTION. **Sec. 3.** This act applies to all causes of action
5 commenced on or after the effective date of this section, regardless
6 of when the cause of action arose. To this extent, this act applies
7 retroactively, but in all other respects it applies prospectively.

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