

with such death or injury or had not intervened between the wrongful act, neglect or default and the resulting death or injury, an action to recover damages for such death or injury may be maintained against the personal representative of such person.

Repeal.

SEC. 2. Section 659, page 165, Laws of 1869, section 722, page 146, Laws of 1877, section 718, Code 1881 and RCW 4.20.040; section 1, chapter 73, Laws of 1953 and RCW 4.20.045; section 149, chapter 156, Laws of 1917 and RCW 11.48.100; section 150, chapter 156, Laws of 1917 and RCW 11.48.110 are each repealed: *Provided*, That all causes of action arising or surviving under any of these statutes prior to the effective date of their repeal shall survive and be enforceable as though these statutes were in full force and effect.

Savings.

Passed the Senate March 5, 1961.

Passed the House March 2, 1961.

Approved by the Governor March 16, 1961.

CHAPTER 138.

[S. B. 11.]

PRISON TERMS AND PAROLES.

AN ACT relating to criminal procedure; and amending section 5, chapter 133, Laws of 1955 and RCW 9.95.040.

Be it enacted by the Legislature of the State of Washington:

Finding of fact or special verdict if armed with deadly weapon.

SECTION 1. In every criminal case wherein conviction would require the board of prison terms and paroles to determine the duration of confinement and wherein there has been an allegation and evidence establishing that the accused was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused was armed with a deadly weapon, as defined by RCW 9.95.040, at

the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the defendant was armed with a deadly weapon, as defined in RCW 9.95.040, at the time of the commission of the crime.

SEC. 2. Section 5, chapter 133, Laws of 1955 and RCW 9.95.040 are each amended to read as follows:

RCW 9.95.040 amended.

Within six months after the admission of a convicted person to the penitentiary, reformatory, or such other state penal institution as may hereafter be established, the board of prison terms and paroles shall fix the duration of his confinement. The term of imprisonment so fixed shall not exceed the maximum provided by law for the offense of which he was convicted or the maximum fixed by the court where the law does not provide for a maximum term.

Board to fix duration of confinement—Minimum terms prescribed for certain cases.

The following limitations are placed on the board of prison terms and paroles with regard to fixing the duration of confinement in certain cases, notwithstanding any provisions of law specifying a lesser sentence, to wit:

(1) For a person not previously convicted of a felony but armed with a deadly weapon at the time of the commission of his offense, the duration of confinement shall not be fixed at less than five years.

(2) For a person previously convicted of a felony either in this state or elsewhere and who was armed with a deadly weapon at the time of the commission of his offense, the duration of confinement shall not be fixed at less than seven and one-half years.

The words "deadly weapon," as used in this section include, but are not limited to, any instrument known as a blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a

blade longer than three inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

(3) For a person convicted of being an habitual criminal within the meaning of the statute which provides for mandatory life imprisonment for such habitual criminals, the duration of confinement shall not be fixed at less than fifteen years. The board shall retain jurisdiction over such convicted person throughout his natural life unless the governor by appropriate executive action orders otherwise.

(4) Any person convicted of embezzling funds from any institution of public deposit of which he was an officer or stockholder, the duration of confinement shall be fixed at not less than five years.

Except when an inmate of the reformatory, penitentiary or such other penal institution as may hereafter be established, has been convicted of murder in the first or second degree, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least four board members concur in such action: *Provided*, That any inmate who has a mandatory minimum term and is paroled prior to the expiration of such term according to the provisions of this chapter shall not receive a conditional release from supervision while on parole until after the mandatory minimum term has expired.

Passed the Senate March 2, 1961.

Passed the House March 5, 1961.

Approved by the Governor March 16, 1961.