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SECOND SUBSTITUTE SENATE BILL 5041

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State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators McCaslin and Kline)

READ FIRST TIME 03/08/05.

1 AN ACT Relating to discretionary weapons enhancements for sentence  
2 ranges; amending RCW 9.94A.533; and prescribing penalties.

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

4 **Sec. 1.** RCW 9.94A.533 and 2003 c 53 s 58 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~~) Four to six years for any felony defined under any law  
13 as a class A felony or with a statutory maximum sentence of at least  
14 twenty years, or both, and not covered under (f) of this subsection;

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

18 (c) (~~Eighteen~~) Nine to twenty-seven months for any felony defined  
19 under any law as a class C felony or with a statutory maximum sentence  
20 of five years, or both, 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(4);

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~~) One to three years for any felony defined under any law  
30 as a class A felony or with a statutory maximum sentence of at least  
31 twenty years, or both, and not covered under (f) of this subsection;

32 (b) (~~One year~~) Six to eighteen months for any felony defined  
33 under any law as a class B felony or with a statutory maximum sentence  
34 of ten years, or both, and not covered under (f) of this subsection;

35 (c) (~~Six~~) Three to nine months for any felony defined under any  
36 law as a class C felony or with a statutory maximum sentence of five  
37 years, or both, and 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(4);

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.605.

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

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