

ESHB 1030 - S COMM AMD
By Committee on Judiciary

ADOPTED 03/06/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as the
4 Guillermo "Bobby" Aguilar and Edgar F. Trevino-Mendoza public safety
5 act of 2008.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
7 to read as follows:

8 (1) The prosecuting attorney may file a special allegation of
9 endangerment by eluding in every criminal case involving a charge of
10 attempting to elude a police vehicle under RCW 46.61.024, when
11 sufficient admissible evidence exists, to show that one or more persons
12 other than the defendant or the pursuing law enforcement officer were
13 threatened with physical injury or harm by the actions of the person
14 committing the crime of attempting to elude a police vehicle.

15 (2) In a criminal case in which there has been a special
16 allegation, the state shall prove beyond a reasonable doubt that the
17 accused committed the crime while endangering one or more persons other
18 than the defendant or the pursuing law enforcement officer. The court
19 shall make a finding of fact of whether or not one or more persons
20 other than the defendant or the pursuing law enforcement officer were
21 endangered at the time of the commission of the crime, or if a jury
22 trial is had, the jury shall, if it finds the defendant guilty, also
23 find a special verdict as to whether or not one or more persons other
24 than the defendant or the pursuing law enforcement officer were
25 endangered during the commission of the crime.

26 **Sec. 3.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to read
27 as follows:

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

3 (2) For persons convicted of the anticipatory offenses of criminal
4 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
5 standard sentence range is determined by locating the sentencing grid
6 sentence range defined by the appropriate offender score and the
7 seriousness level of the completed crime, and multiplying the range by
8 seventy-five percent.

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

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

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

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

35 (d) If the offender is being sentenced for any firearm enhancements
36 under (a), (b), and/or (c) of this subsection and the offender has
37 previously been sentenced for any deadly weapon enhancements after July
38 23, 1995, under (a), (b), and/or (c) of this subsection or subsection

1 (4)(a), (b), and/or (c) of this section, or both, all firearm
2 enhancements under this subsection shall be twice the amount of the
3 enhancement listed;

4 (e) Notwithstanding any other provision of law, all firearm
5 enhancements under this section are mandatory, shall be served in total
6 confinement, and shall run consecutively to all other sentencing
7 provisions, including other firearm or deadly weapon enhancements, for
8 all offenses sentenced under this chapter. However, whether or not a
9 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(4);

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

17 (g) If the standard sentence range under this section exceeds the
18 statutory maximum sentence for the offense, the statutory maximum
19 sentence shall be the presumptive sentence unless the offender is a
20 persistent offender. If the addition of a firearm enhancement
21 increases the sentence so that it would exceed the statutory maximum
22 for the offense, the portion of the sentence representing the
23 enhancement may not be reduced.

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

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

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

13 (d) If the offender is being sentenced under (a), (b), and/or (c)
14 of this subsection for any deadly weapon enhancements and the offender
15 has previously been sentenced for any deadly weapon enhancements after
16 July 23, 1995, under (a), (b), and/or (c) of this subsection or
17 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
18 weapon enhancements under this subsection shall be twice the amount of
19 the enhancement listed;

20 (e) Notwithstanding any other provision of law, all deadly weapon
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(4);

28 (f) The deadly weapon enhancements in this section shall apply to
29 all 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 deadly weapon 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 (5) The following additional times shall be added to the standard
4 sentence range if the offender or an accomplice committed the offense
5 while in a county jail or state correctional facility and the offender
6 is being sentenced for one of the crimes listed in this subsection. If
7 the offender or an accomplice committed one of the crimes listed in
8 this subsection while in a county jail or state correctional facility,
9 and the offender is being sentenced for an anticipatory offense under
10 chapter 9A.28 RCW to commit one of the crimes listed in this
11 subsection, the following additional times shall be added to the
12 standard sentence range determined under subsection (2) of this
13 section:

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

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

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

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

22 (6) An additional twenty-four months shall be added to the standard
23 sentence range for any ranked offense involving a violation of chapter
24 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
25 9.94A.605. All enhancements under this subsection shall run
26 consecutively to all other sentencing provisions, for all offenses
27 sentenced under this chapter.

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

32 (8)(a) The following additional times shall be added to the
33 standard sentence range for felony crimes committed on or after July 1,
34 2006, if the offense was committed with sexual motivation, as that term
35 is defined in RCW 9.94A.030. If the offender is being sentenced for
36 more than one offense, the sexual motivation enhancement must be added
37 to the total period of total confinement for all offenses, regardless
38 of which underlying offense is subject to a sexual motivation

1 enhancement. If the offender committed the offense with sexual
2 motivation and the offender is being sentenced for an anticipatory
3 offense under chapter 9A.28 RCW, the following additional times shall
4 be added to the standard sentence range determined under subsection (2)
5 of this section based on the felony crime of conviction as classified
6 under RCW 9A.28.020:

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

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

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

15 (iv) If the offender is being sentenced for any sexual motivation
16 enhancements under (i), (ii), and/or (iii) of this subsection and the
17 offender has previously been sentenced for any sexual motivation
18 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
19 this subsection, all sexual motivation enhancements under this
20 subsection shall be twice the amount of the enhancement listed;

21 (b) Notwithstanding any other provision of law, all sexual
22 motivation enhancements under this subsection are mandatory, shall be
23 served in total confinement, and shall run consecutively to all other
24 sentencing provisions, including other sexual motivation enhancements,
25 for all offenses sentenced under this chapter. However, whether or not
26 a mandatory minimum term has expired, an offender serving a sentence
27 under this subsection may be granted an extraordinary medical placement
28 when authorized under RCW 9.94A.728(4);

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

31 (d) If the standard sentence range under this subsection exceeds
32 the statutory maximum sentence for the offense, the statutory maximum
33 sentence shall be the presumptive sentence unless the offender is a
34 persistent offender. If the addition of a sexual motivation
35 enhancement increases the sentence so that it would exceed the
36 statutory maximum for the offense, the portion of the sentence
37 representing the enhancement may not be reduced;

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

4 (f) Nothing in this subsection prevents a sentencing court from
5 imposing a sentence outside the standard sentence range pursuant to RCW
6 9.94A.535.

7 (9) An additional one-year enhancement shall be added to the
8 standard sentence range for the felony crimes of RCW 9A.44.073,
9 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
10 or after July 22, 2007, if the offender engaged, agreed, or offered to
11 engage the victim in the sexual conduct in return for a fee. If the
12 offender is being sentenced for more than one offense, the one-year
13 enhancement must be added to the total period of total confinement for
14 all offenses, regardless of which underlying offense is subject to the
15 enhancement. If the offender is being sentenced for an anticipatory
16 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
17 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
18 solicited another, or conspired to engage, agree, or offer to engage
19 the victim in (~~{the}~~) the sexual conduct in return for a fee, an
20 additional one-year enhancement shall be added to the standard sentence
21 range determined under subsection (2) of this section. For purposes of
22 this subsection, "sexual conduct" means sexual intercourse or sexual
23 contact, both as defined in chapter 9A.44 RCW.

24 (10) 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 section 2 of this act."

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29 On page 1, line 2 of the title, after "vehicle;" strike the
30 remainder of the title and insert "amending RCW 9.94A.533; adding a new

1 section to chapter 9.94A RCW; creating a new section; and prescribing
2 penalties."

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