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**SUBSTITUTE SENATE BILL 5639**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Brandland, Marr, Sheldon, Regala, Stevens, Shin, Kilmer, Parlette, Kohl-Welles, and Tom; by request of Attorney General)

READ FIRST TIME 02/25/09.

1       AN ACT Relating to vulnerable adults; and reenacting and amending  
2       RCW 9.94A.533.

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

4       **Sec. 1.** RCW 9.94A.533 and 2008 c 276 s 301 and 2008 c 219 s 3 are  
5       each reenacted and amended to read 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 years for any felony defined under any law as a class A  
13 felony or with a statutory maximum sentence of at least twenty years,  
14 or both, and not covered under (f) of this subsection;

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

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

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

35 (c) Six months for any felony defined under any law as a class C  
36 felony or with a statutory maximum sentence of five years, or both, and  
37 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. All enhancements under this subsection shall run  
13 consecutively to all other sentencing provisions, for all offenses  
14 sentenced under this chapter.

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

19 (8)(a) The following additional times shall be added to the  
20 standard sentence range for felony crimes committed on or after July 1,  
21 2006, if the offense was committed with sexual motivation, as that term  
22 is defined in RCW 9.94A.030. If the offender is being sentenced for  
23 more than one offense, the sexual motivation enhancement must be added  
24 to the total period of total confinement for all offenses, regardless  
25 of which underlying offense is subject to a sexual motivation  
26 enhancement. If the offender committed the offense with sexual  
27 motivation and the offender is being sentenced for an anticipatory  
28 offense under chapter 9A.28 RCW, the following additional times shall  
29 be added to the standard sentence range determined under subsection (2)  
30 of this section based on the felony crime of conviction as classified  
31 under RCW 9A.28.020:

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

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

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

3 (iv) If the offender is being sentenced for any sexual motivation  
4 enhancements under (a)(i), (ii), and/or (iii) of this subsection and  
5 the offender has previously been sentenced for any sexual motivation  
6 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii)  
7 of this subsection, all sexual motivation enhancements under this  
8 subsection shall be twice the amount of the enhancement listed;

9 (b) Notwithstanding any other provision of law, all sexual  
10 motivation enhancements under this subsection are mandatory, shall be  
11 served in total confinement, and shall run consecutively to all other  
12 sentencing provisions, including other sexual motivation enhancements,  
13 for all offenses sentenced under this chapter. However, whether or not  
14 a mandatory minimum term has expired, an offender serving a sentence  
15 under this subsection may be granted an extraordinary medical placement  
16 when authorized under RCW 9.94A.728(4);

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

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

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

29 (f) Nothing in this subsection prevents a sentencing court from  
30 imposing a sentence outside the standard sentence range pursuant to RCW  
31 9.94A.535.

32 (9) An additional one-year enhancement shall be added to the  
33 standard sentence range for the felony crimes of RCW 9A.44.073,  
34 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
35 or after July 22, 2007, if the offender engaged, agreed, or offered to  
36 engage the victim in the sexual conduct in return for a fee. If the  
37 offender is being sentenced for more than one offense, the one-year  
38 enhancement must be added to the total period of total confinement for

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

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

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

25 (c) The increased penalty specified in (a) of this subsection is  
26 unavailable in the event that the prosecution gives notice that it will  
27 seek an exceptional sentence based on an aggravating factor under RCW  
28 9.94A.535.

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

34 (12) The following additional times shall be added to the standard  
35 sentence range for felony crimes committed after July 1, 2009, if the  
36 victim was a vulnerable adult as defined in RCW 74.34.020, at the time  
37 of the offense. If the offender is being sentenced for more than one  
38 offense, the enhancement or enhancements must be added to the total

1 period of confinement for all offenses, regardless of which underlying  
2 offense is subject to an enhancement. If the offender is being  
3 sentenced for an anticipatory offense under chapter 9A.28 RCW, the  
4 following additional times shall be added to the standard sentence  
5 range determined under subsection (2) of this section based on the  
6 felony crime of conviction as classified under RCW 9A.28.020:

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

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

12 (c) Eighteen months for any felony defined under any law as a class  
13 C felony or with a statutory maximum sentence of five years, or both;

14 (d) All vulnerable adult enhancements under this subsection are  
15 mandatory, shall be served in total confinement, and shall run  
16 consecutively to all other sentencing provisions, including other  
17 firearm or deadly weapon enhancements, for all offenses sentenced under  
18 this chapter. However, whether or not a mandatory minimum term has  
19 expired, an offender serving a sentence under this subsection may be  
20 granted an extraordinary medical placement when authorized under RCW  
21 9.94A.728(4);

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

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