

ESHB 1705 - S AMD 1300

By Senator Wagoner

NOT ADOPTED 03/01/2022

1 On page 15, after line 24, insert the following:

2 "Sec. 8. RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are
3 each reenacted and amended to read as follows:

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

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

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

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

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

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

7 (d) If the offender is being sentenced for any firearm
8 enhancements under (a), (b), and/or (c) of this subsection and the
9 offender has previously been sentenced for any deadly weapon
10 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
11 subsection or subsection (4)(a), (b), and/or (c) of this section, or
12 both, all firearm enhancements under this subsection shall be twice
13 the amount of the enhancement listed;

14 (e) Notwithstanding any other provision of law, all firearm
15 enhancements under this section are mandatory, shall be served in
16 total confinement, and shall run consecutively to all other
17 sentencing provisions, including other firearm or deadly weapon
18 enhancements, for all offenses sentenced under this chapter. However,
19 whether or not a mandatory minimum term has expired, an offender
20 serving a sentence under this subsection may be:

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

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

24 (f) The firearm enhancements in this section shall apply to all
25 felony crimes except the following: Possession of a machine gun or
26 bump-fire stock, possessing a stolen firearm, drive-by shooting,
27 theft of a firearm, unlawful possession of a firearm in the first and
28 second degree, and use of a machine gun or bump-fire stock in a
29 felony;

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

37 (4) The following additional times shall be added to the standard
38 sentence range for felony crimes committed after July 23, 1995, if
39 the offender or an accomplice was armed with a deadly weapon other
40 than a firearm as defined in RCW 9.41.010 and the offender is being

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

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

18 (b) One year for any felony defined under any law as a class B
19 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
20 both, and not covered under (f) of this subsection;

21 (c) Six months for any felony defined under any law as a class C
22 felony or with a statutory maximum sentence of five years, or both,
23 and not covered under (f) of this subsection;

24 (d) If the offender is being sentenced under (a), (b), and/or (c)
25 of this subsection for any deadly weapon enhancements and the
26 offender has previously been sentenced for any deadly weapon
27 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
28 subsection or subsection (3)(a), (b), and/or (c) of this section, or
29 both, all deadly weapon enhancements under this subsection shall be
30 twice the amount of the enhancement listed;

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

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

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

1 (f) The deadly weapon enhancements in this section shall apply to
2 all felony crimes except the following: Possession of a machine gun
3 or bump-fire stock, possessing a stolen firearm, drive-by shooting,
4 theft of a firearm, unlawful possession of a firearm in the first and
5 second degree, and use of a machine gun or bump-fire stock in a
6 felony;

7 (g) If the standard sentence range under this section exceeds the
8 statutory maximum sentence for the offense, the statutory maximum
9 sentence shall be the presumptive sentence unless the offender is a
10 persistent offender. If the addition of a deadly weapon enhancement
11 increases the sentence so that it would exceed the statutory maximum
12 for the offense, the portion of the sentence representing the
13 enhancement may not be reduced.

14 (5) The following additional times shall be added to the standard
15 sentence range if the offender or an accomplice committed the offense
16 while in a county jail or state correctional facility and the
17 offender is being sentenced for one of the crimes listed in this
18 subsection. If the offender or an accomplice committed one of the
19 crimes listed in this subsection while in a county jail or state
20 correctional facility, and the offender is being sentenced for an
21 anticipatory offense under chapter 9A.28 RCW to commit one of the
22 crimes listed in this subsection, the following additional times
23 shall be added to the standard sentence range determined under
24 subsection (2) of this section:

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

26 (a) or (b) or 69.50.410;

27 (b) Fifteen months for offenses committed under RCW 69.50.401(2)

28 (c), (d), or (e);

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

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

33 (6) An additional (~~twenty-four~~) 24 months shall be added to the
34 standard sentence range for any ranked offense involving a violation
35 of chapter 69.50 RCW if the offense was also a violation of RCW
36 69.50.435 or 9.94A.827. All enhancements under this subsection shall
37 run consecutively to all other sentencing provisions, for all
38 offenses sentenced under this chapter.

39 (7) An additional two years shall be added to the standard
40 sentence range for vehicular homicide committed while under the

1 influence of intoxicating liquor or any drug as defined by RCW
2 46.61.502 for each prior offense as defined in RCW 46.61.5055.

3 Notwithstanding any other provision of law, all impaired driving
4 enhancements under this subsection are mandatory, shall be served in
5 total confinement, and shall run consecutively to all other
6 sentencing provisions, including other impaired driving enhancements,
7 for all offenses sentenced under this chapter.

8 An offender serving a sentence under this subsection may be
9 granted an extraordinary medical placement when authorized under RCW
10 9.94A.728(1)(c).

11 (8)(a) The following additional times shall be added to the
12 standard sentence range for felony crimes committed on or after July
13 1, 2006, if the offense was committed with sexual motivation, as that
14 term is defined in RCW 9.94A.030. If the offender is being sentenced
15 for more than one offense, the sexual motivation enhancement must be
16 added to the total period of total confinement for all offenses,
17 regardless of which underlying offense is subject to a sexual
18 motivation enhancement. If the offender committed the offense with
19 sexual motivation and the offender is being sentenced for an
20 anticipatory offense under chapter 9A.28 RCW, the following
21 additional times shall be added to the standard sentence range
22 determined under subsection (2) of this section based on the felony
23 crime of conviction as classified under RCW 9A.28.020:

24 (i) Two years for any felony defined under the law as a class A
25 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
26 years, or both;

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

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

32 (iv) If the offender is being sentenced for any sexual motivation
33 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
34 the offender has previously been sentenced for any sexual motivation
35 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
36 (iii) of this subsection, all sexual motivation enhancements under
37 this subsection shall be twice the amount of the enhancement listed;

38 (b) Notwithstanding any other provision of law, all sexual
39 motivation enhancements under this subsection are mandatory, shall be
40 served in total confinement, and shall run consecutively to all other

1 sentencing provisions, including other sexual motivation
2 enhancements, for all offenses sentenced under this chapter. However,
3 whether or not a mandatory minimum term has expired, an offender
4 serving a sentence under this subsection may be:

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

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

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

10 (d) If the standard sentence range under this subsection exceeds
11 the statutory maximum sentence for the offense, the statutory maximum
12 sentence shall be the presumptive sentence unless the offender is a
13 persistent offender. If the addition of a sexual motivation
14 enhancement increases the sentence so that it would exceed the
15 statutory maximum for the offense, the portion of the sentence
16 representing the enhancement may not be reduced;

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

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

23 (9) An additional one-year enhancement shall be added to the
24 standard sentence range for the felony crimes of RCW 9A.44.073,
25 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
26 or after July 22, 2007, if the offender engaged, agreed, or offered
27 to engage the victim in the sexual conduct in return for a fee. If
28 the offender is being sentenced for more than one offense, the
29 one-year enhancement must be added to the total period of total
30 confinement for all offenses, regardless of which underlying offense
31 is subject to the enhancement. If the offender is being sentenced for
32 an anticipatory offense for the felony crimes of RCW 9A.44.073,
33 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
34 offender attempted, solicited another, or conspired to engage, agree,
35 or offer to engage the victim in the sexual conduct in return for a
36 fee, an additional one-year enhancement shall be added to the
37 standard sentence range determined under subsection (2) of this
38 section. For purposes of this subsection, "sexual conduct" means
39 sexual intercourse or sexual contact, both as defined in chapter
40 9A.44 RCW.

1 (10)(a) For a person age (~~eighteen~~) 18 or older convicted of
2 any criminal street gang-related felony offense for which the person
3 compensated, threatened, or solicited a minor in order to involve the
4 minor in the commission of the felony offense, the standard sentence
5 range is determined by locating the sentencing grid sentence range
6 defined by the appropriate offender score and the seriousness level
7 of the completed crime, and multiplying the range by one hundred
8 twenty-five percent. If the standard sentence range under this
9 subsection exceeds the statutory maximum sentence for the offense,
10 the statutory maximum sentence is the presumptive sentence unless the
11 offender is a persistent offender.

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

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

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

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

27 (13) An additional (~~twelve~~) 12 months shall be added to the
28 standard sentence range for vehicular homicide committed while under
29 the influence of intoxicating liquor or any drug as defined by RCW
30 46.61.520 or for vehicular assault committed while under the
31 influence of intoxicating liquor or any drug as defined by RCW
32 46.61.522, or for any felony driving under the influence (RCW
33 46.61.502(6)) or felony physical control under the influence (RCW
34 46.61.504(6)) for each child passenger under the age of (~~sixteen~~)
35 16 who is an occupant in the defendant's vehicle. These enhancements
36 shall be mandatory, shall be served in total confinement, and shall
37 run consecutively to all other sentencing provisions, including other
38 minor child enhancements, for all offenses sentenced under this
39 chapter. If the addition of a minor child enhancement increases the
40 sentence so that it would exceed the statutory maximum for the

1 offense, the portion of the sentence representing the enhancement
2 shall be mandatory, shall be served in total confinement, and shall
3 run consecutively to all other sentencing provisions.

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

7 (15) An additional 12 months shall be added to the standard
8 sentence range for a violent offense that involved the use of an
9 untraceable firearm as defined in RCW 9.41.010.

10 (16) Regardless of any provisions in this section, if a person is
11 being sentenced in adult court for a crime committed under age
12 (~~eighteen~~) 18, the court has full discretion to depart from
13 mandatory sentencing enhancements and to take the particular
14 circumstances surrounding the defendant's youth into account.

15 NEW SECTION. Sec. 9. A new section is added to chapter 9.94A
16 RCW to read as follows:

17 (1) In a prosecution of a violent offense, the prosecution may
18 file a special allegation that the offense involved the use of an
19 untraceable firearm as defined in RCW 9.41.010.

20 (2) The state has the burden of proving a special allegation made
21 under this section beyond a reasonable doubt. If a jury is had, the
22 jury shall, if it finds the defendant guilty, also find a special
23 verdict whether the offense involved the use of an untraceable
24 firearm. If no jury is had, the court shall make a finding of fact
25 whether the offense involved the use of an untraceable firearm."

26 Renumber the remaining sections consecutively and correct any
27 internal references accordingly.

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NOT ADOPTED 03/01/2022

28 On page 1, line 7 of the title, after "43.43.580;" insert
29 "reenacting and amending RCW 9.94A.533;"

30 On page 1, line 8 of the title, after "9.41 RCW;" insert "adding
31 a new section to chapter 9.94A RCW;"

EFFECT: Amends the underlying bill to authorize a 12-month sentencing enhancement for violent offenses that involved the use of an untraceable firearm.

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