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HOUSE BILL 2340

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Anderson, Rodne, McCune, Pearson, Dammeier, Priest, Roach, and Kelley

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1 AN ACT Relating to creating the child predatory drug act;  
2 reenacting and amending RCW 9.94A.533; adding a new section to chapter  
3 9.94A RCW; creating new sections; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the child  
6 predatory drug act of 2010.

7 NEW SECTION. **Sec. 2.** The legislature finds an alarming trend  
8 exists of the manufacture, sale, delivery, and possession of child  
9 predatory drugs, particularly of methamphetamines, heroin, and  
10 marijuana, that are flavored, colored, shaped, packaged, or otherwise  
11 altered in a way that is designed with the intent to make them more  
12 appealing to minors. Child predatory drugs are most often cheap and  
13 highly addictive and create grave risks. The manufacture, sale,  
14 delivery, and possession of child predatory drugs are direct attempts  
15 by predatory drug dealers to reach out and attract a younger age group  
16 to lure them into the drug culture. Child predatory drugs are cleverly  
17 disguised and distributed among unsuspecting minors in order to more  
18 easily entice them to use them. As such, child predatory drugs are

1 extremely dangerous and exceptionally harmful since they can be  
2 ingested by younger children who have no idea what they are consuming  
3 or why they may be experiencing serious negative effects. Flavors may  
4 include strawberry, chocolate, cola, and others that reduce the bitter  
5 taste of the drug, but do not affect the potency of the drug. Drugs  
6 packaged or disguised as candy or other more enticing objects should be  
7 considered serious threats by parents. Children should be advised to  
8 not accept any candy which may resemble one of these new child  
9 predatory drugs, to avoid any participation in distributing or using  
10 any drugs, no matter how harmless they may seem, and to report any  
11 suspicious activity to the appropriate authorities or a trusted adult.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A RCW  
13 to read as follows:

14 (1) In a prosecution for manufacturing, selling, delivering, or  
15 possessing with intent to manufacture, sell, or deliver a controlled  
16 substance listed in RCW 69.50.401, the prosecuting attorney shall file  
17 a special allegation of promoting a child predatory drug whenever  
18 sufficient admissible evidence exists, which, when considered with the  
19 most plausible, reasonably foreseeable defense that could be raised  
20 under the evidence, would justify a finding by a reasonable and  
21 objective fact finder that the controlled substance was flavored,  
22 colored, shaped, packaged, or otherwise altered in a way that was  
23 designed with the intent to make the controlled substance more  
24 appealing to a minor.

25 (2) Once a special allegation has been made under this section, the  
26 state has the burden to prove beyond a reasonable doubt that the  
27 controlled substance was flavored, colored, shaped, packaged, or  
28 otherwise altered in a way that was designed with the intent to make  
29 the controlled substance more appealing to a minor. If a jury is had,  
30 the jury shall, if it finds the defendant guilty, also find a special  
31 verdict as to whether the controlled substance was flavored, colored,  
32 shaped, packaged, or otherwise altered in a way that was designed with  
33 the intent to make the controlled substance more appealing to a minor.  
34 If no jury is had, the court shall make a finding of fact as to whether  
35 the controlled substance was flavored, colored, shaped, packaged, or  
36 otherwise altered in a way that was designed with the intent to make  
37 the controlled substance more appealing to a minor.

1 (3) The prosecuting attorney shall not withdraw a special  
2 allegation filed under this section without the approval of the court  
3 through an order of dismissal of the allegation. The court may not  
4 dismiss the special allegation unless it finds that the order is  
5 necessary to correct an error in the initial charging decision or that  
6 there are evidentiary problems that make proving the special allegation  
7 doubtful.

8 **Sec. 4.** RCW 9.94A.533 and 2008 c 276 s 301 and 2008 c 219 s 3 are  
9 each reenacted and amended to read as follows:

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

12 (2) For persons convicted of the anticipatory offenses of criminal  
13 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
14 standard sentence range is determined by locating the sentencing grid  
15 sentence range defined by the appropriate offender score and the  
16 seriousness level of the completed crime, and multiplying the range by  
17 seventy-five percent.

18 (3) The following additional times shall be added to the standard  
19 sentence range for felony crimes committed after July 23, 1995, if the  
20 offender or an accomplice was armed with a firearm as defined in RCW  
21 9.41.010 and the offender is being sentenced for one of the crimes  
22 listed in this subsection as eligible for any firearm enhancements  
23 based on the classification of the completed felony crime. If the  
24 offender is being sentenced for more than one offense, the firearm  
25 enhancement or enhancements must be added to the total period of  
26 confinement for all offenses, regardless of which underlying offense is  
27 subject to a firearm enhancement. If the offender or an accomplice was  
28 armed with a firearm as defined in RCW 9.41.010 and the offender is  
29 being sentenced for an anticipatory offense under chapter 9A.28 RCW to  
30 commit one of the crimes listed in this subsection as eligible for any  
31 firearm enhancements, the following additional times shall be added to  
32 the standard sentence range determined under subsection (2) of this  
33 section based on the felony crime of conviction as classified under RCW  
34 9A.28.020:

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

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

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

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

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

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

34 (4) The following additional times shall be added to the standard  
35 sentence range for felony crimes committed after July 23, 1995, if the  
36 offender or an accomplice was armed with a deadly weapon other than a  
37 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
38 for one of the crimes listed in this subsection as eligible for any

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

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

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

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

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

30 (e) Notwithstanding any other provision of law, all deadly weapon  
31 enhancements under this section are mandatory, shall be served in total  
32 confinement, and shall run consecutively to all other sentencing  
33 provisions, including other firearm or deadly weapon enhancements, for  
34 all offenses sentenced under this chapter. However, whether or not a  
35 mandatory minimum term has expired, an offender serving a sentence  
36 under this subsection may be granted an extraordinary medical placement  
37 when authorized under RCW 9.94A.728(4);

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 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
4 unlawful possession of a firearm in the first and second degree, and  
5 use of a machine gun in a felony;

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

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

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

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

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

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

32 ~~(6) ((An additional twenty four months shall be added to the~~  
33 ~~standard sentence range for any ranked offense involving)) (a) The~~  
34 ~~following additional times shall be added to the standard sentence~~  
35 ~~range if the offense involves a violation of chapter 69.50 RCW ((if the~~  
36 ~~offense was))):~~

37 (i) Twenty-four months for an offense that is also a violation of  
38 RCW 69.50.435 or 9.94A.605;

1        (ii) Forty-eight months for an offense that is also a violation of  
2 section 3 of this act.

3        (b) All enhancements under this subsection shall run consecutively  
4 to all other sentencing provisions, for all offenses sentenced under  
5 this chapter.

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

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

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

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

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

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

37        (b) Notwithstanding any other provision of law, all sexual  
38 motivation enhancements under this subsection are mandatory, shall be

1 served in total confinement, and shall run consecutively to all other  
2 sentencing provisions, including other sexual motivation enhancements,  
3 for all offenses sentenced under this chapter. However, whether or not  
4 a mandatory minimum term has expired, an offender serving a sentence  
5 under this subsection may be granted an extraordinary medical placement  
6 when authorized under RCW 9.94A.728(4);

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

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

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

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

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



1           (10)(a) For a person age eighteen or older convicted of any  
2 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 of  
7 the completed crime, and multiplying the range by one hundred twenty-  
8 five percent. If the standard sentence range under this subsection  
9 exceeds the statutory maximum sentence for the offense, the statutory  
10 maximum sentence is the presumptive sentence unless the offender is a  
11 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 of  
14 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 will  
17 seek an exceptional sentence based on an aggravating factor under RCW  
18 9.94A.535.

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

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