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SENATE BILL 5499

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State of Washington

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2015 Regular Session

By Senators Roach, Hasegawa, Rivers, Rolfes, Warnick, Dansel, Padden, Angel, and Chase

Read first time 01/22/15. Referred to Committee on Law & Justice.

1 AN ACT Relating to a special allegation of a nefarious drone  
2 enterprise; amending RCW 9.94A.533; adding a new section to chapter  
3 9.94A RCW; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that technological  
6 advances have provided new unique equipment that may be utilized in a  
7 variety of purposes. These technological advances often outpace  
8 statutory protections. Unmanned aerial vehicles, commonly known as  
9 drones, may be used for surveillance or delivery and may facilitate  
10 both beneficial enterprises and nefarious enterprises. It is the  
11 intent of the legislature to ensure that unmanned aerial vehicles  
12 should not be used to facilitate or commit nefarious criminal  
13 purposes.

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

16 (1) The prosecuting attorney may file a special allegation of  
17 nefarious drone enterprise in every criminal case involving the use  
18 of an unmanned aerial vehicle to facilitate or commit any crime, when  
19 sufficient admissible evidence exists, to show that one or more

1 persons, whether the accused or an accomplice, used an unmanned  
2 aerial vehicle to facilitate or commit any crime.

3 (2) In a criminal case in which there has been a special  
4 allegation, the state shall prove beyond a reasonable doubt that the  
5 accused committed the crime and also that the accused or an  
6 accomplice used an unmanned aerial vehicle to facilitate or commit  
7 the crime. The court shall make a finding of fact of whether or not  
8 the accused or an accomplice used an unmanned aerial vehicle to  
9 facilitate or commit the crime, or if a jury trial is had, the jury  
10 shall, if it finds the defendant guilty, also find a special verdict  
11 as to whether or not the accused or an accomplice used an unmanned  
12 aerial vehicle to facilitate or commit the crime.

13 **Sec. 3.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to  
14 read as follows:

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

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

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

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

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

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

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

17 (e) Notwithstanding any other provision of law, all firearm  
18 enhancements under this section are mandatory, shall be served in  
19 total confinement, and shall run consecutively to all other  
20 sentencing provisions, including other firearm or deadly weapon  
21 enhancements, for all offenses sentenced under this chapter. However,  
22 whether or not a mandatory minimum term has expired, an offender  
23 serving a sentence under this subsection may be granted an  
24 extraordinary medical placement when authorized under RCW  
25 9.94A.728(3);

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

31 (g) If the standard sentence range under this section exceeds the  
32 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 firearm enhancement  
35 increases the sentence so that it would exceed the statutory maximum  
36 for the offense, the portion of the sentence representing the  
37 enhancement may not be reduced.

38 (4) The following additional times shall be added to the standard  
39 sentence range for felony crimes committed after July 23, 1995, if  
40 the offender or an accomplice was armed with a deadly weapon other

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

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

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

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

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

32 (e) Notwithstanding any other provision of law, all deadly weapon  
33 enhancements under this section are mandatory, shall be served in  
34 total confinement, and shall run consecutively to all other  
35 sentencing provisions, including other firearm or deadly weapon  
36 enhancements, for all offenses sentenced under this chapter. However,  
37 whether or not a mandatory minimum term has expired, an offender  
38 serving a sentence under this subsection may be granted an  
39 extraordinary medical placement when authorized under RCW  
40 9.94A.728(3);

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  
16 offender is being sentenced for one of the crimes listed in this  
17 subsection. If the offender or an accomplice committed one of the  
18 crimes listed in this subsection while in a county jail or state  
19 correctional facility, and the offender is being sentenced for an  
20 anticipatory offense under chapter 9A.28 RCW to commit one of the  
21 crimes listed in this subsection, the following additional times  
22 shall be added to the standard sentence range determined under  
23 subsection (2) of this 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  
30 a state correctional facility or county jail shall be deemed to be  
31 part 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 violation  
34 of chapter 69.50 RCW if the offense was also a violation of RCW  
35 69.50.435 or 9.94A.827. All enhancements under this subsection shall  
36 run consecutively to all other sentencing provisions, for all  
37 offenses sentenced under this chapter.

38 (7) An additional two years shall be added to the standard  
39 sentence range for vehicular homicide committed while under the  
40 influence of intoxicating liquor or any drug as defined by RCW

1 46.61.502 for each prior offense as defined in RCW 46.61.5055. All  
2 enhancements under this subsection shall be mandatory, shall be  
3 served in total confinement, and shall run consecutively to all other  
4 sentencing provisions.

5 (8)(a) The following additional times shall be added to the  
6 standard sentence range for felony crimes committed on or after July  
7 1, 2006, if the offense was committed with sexual motivation, as that  
8 term is defined in RCW 9.94A.030. If the offender is being sentenced  
9 for more than one offense, the sexual motivation enhancement must be  
10 added to the total period of total confinement for all offenses,  
11 regardless of which underlying offense is subject to a sexual  
12 motivation enhancement. If the offender committed the offense with  
13 sexual motivation and the offender is being sentenced for an  
14 anticipatory offense under chapter 9A.28 RCW, the following  
15 additional times shall be added to the standard sentence range  
16 determined under subsection (2) of this section based on the felony  
17 crime of conviction as classified under RCW 9A.28.020:

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

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

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

26 (iv) If the offender is being sentenced for any sexual motivation  
27 enhancements under (a)(i), (ii), and/or (iii) of this subsection and  
28 the offender has previously been sentenced for any sexual motivation  
29 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or  
30 (iii) of this subsection, all sexual motivation enhancements under  
31 this subsection shall be twice the amount of the enhancement listed;

32 (b) Notwithstanding any other provision of law, all sexual  
33 motivation enhancements under this subsection are mandatory, shall be  
34 served in total confinement, and shall run consecutively to all other  
35 sentencing provisions, including other sexual motivation  
36 enhancements, for all offenses sentenced under this chapter. However,  
37 whether or not a mandatory minimum term has expired, an offender  
38 serving a sentence under this subsection may be granted an  
39 extraordinary medical placement when authorized under RCW  
40 9.94A.728(3);

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

3 (d) If the standard sentence range under this subsection exceeds  
4 the statutory maximum sentence for the offense, the statutory maximum  
5 sentence shall be the presumptive sentence unless the offender is a  
6 persistent offender. If the addition of a sexual motivation  
7 enhancement increases the sentence so that it would exceed the  
8 statutory maximum for the offense, the portion of the sentence  
9 representing the enhancement may not be reduced;

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

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

16 (9) An additional one-year enhancement shall be added to the  
17 standard sentence range for the felony crimes of RCW 9A.44.073,  
18 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
19 or after July 22, 2007, if the offender engaged, agreed, or offered  
20 to engage the victim in the sexual conduct in return for a fee. If  
21 the offender is being sentenced for more than one offense, the  
22 one-year enhancement must be added to the total period of total  
23 confinement for all offenses, regardless of which underlying offense  
24 is subject to the enhancement. If the offender is being sentenced for  
25 an anticipatory offense for the felony crimes of RCW 9A.44.073,  
26 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the  
27 offender attempted, solicited another, or conspired to engage, agree,  
28 or offer to engage the victim in the sexual conduct in return for a  
29 fee, an additional one-year enhancement shall be added to the  
30 standard sentence range determined under subsection (2) of this  
31 section. For purposes of this subsection, "sexual conduct" means  
32 sexual intercourse or sexual contact, both as defined in chapter  
33 9A.44 RCW.

34 (10)(a) For a person age eighteen or older convicted of any  
35 criminal street gang-related felony offense for which the person  
36 compensated, threatened, or solicited a minor in order to involve the  
37 minor in the commission of the felony offense, the standard sentence  
38 range is determined by locating the sentencing grid sentence range  
39 defined by the appropriate offender score and the seriousness level  
40 of the completed crime, and multiplying the range by one hundred

1 twenty-five percent. If the standard sentence range under this  
2 subsection exceeds the statutory maximum sentence for the offense,  
3 the statutory maximum sentence is the presumptive sentence unless the  
4 offender is a persistent offender.

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

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

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

17 (12) An additional twelve months shall be added to the standard  
18 sentence range for an offense that is also a violation of RCW  
19 9.94A.831.

20 (13) An additional twelve months shall be added to the standard  
21 sentence range for vehicular homicide committed while under the  
22 influence of intoxicating liquor or any drug as defined by RCW  
23 46.61.520 or for vehicular assault committed while under the  
24 influence of intoxicating liquor or any drug as defined by RCW  
25 46.61.522, or for any felony driving under the influence (RCW  
26 46.61.502(6)) or felony physical control under the influence (RCW  
27 46.61.504(6)) for each child passenger under the age of sixteen who  
28 is an occupant in the defendant's vehicle. These enhancements shall  
29 be mandatory, shall be served in total confinement, and shall run  
30 consecutively to all other sentencing provisions. If the addition of  
31 a minor child enhancement increases the sentence so that it would  
32 exceed the statutory maximum for the offense, the portion of the  
33 sentence representing the enhancement may not be reduced.

34 (14) An additional twelve months shall be added to the standard  
35 sentence range for an offense that is also a violation of RCW  
36 9.94A.832.

1       (15) An additional twelve months shall be added to the standard  
2 sentence range for an offense that is also a violation of section 2  
3 of this act.

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