

# HOUSE BILL REPORT

## HB 1148

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to determining sentences for multiple offenses and enhancements.

**Brief Description:** Determining sentences for multiple offenses and enhancements.

**Sponsors:** Representative Goodman.

**Brief History:**

**Committee Activity:**

Public Safety: 1/21/15, 1/23/15 [DPS].

**Brief Summary of Substitute Bill**

- Allows the court to impose a mitigated exceptional sentence because of the "stacking" sentencing of firearm or deadly weapon enhancements.
- Requires that when imposing a mitigated exceptional sentence for firearm or deadly weapon enhancements, the period of confinement cannot be below the minimum sentence for the most serious current offense, including any enhancements and at least one firearm or deadly weapon enhancement for each victim.
- Allows for consideration of anticipatory offenses as the "most severe offense" for the purpose of calculating sentence ranges for multiple serious violent offenses.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

**Staff:** Cassie Jones (786-7303).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Under the Sentencing Reform Act, sentences for typical felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history.

#### Consecutive Sentencing.

Current offenses sentenced together are generally served concurrently, rather than consecutively, with the exceptions being: (1) two or more serious violent offenses arising from separate and distinct criminal conduct; and (2) current convictions for Theft of a Firearm and Unlawful Possession of a Firearm. Under those exceptions, the sentences are served consecutively.

The sentence for multiple serious violent offenses is calculated separately for each offense. For the offense with the highest seriousness level, the sentencing range will be calculated using an offender score which incorporates the offender's prior criminal history and any other current offenses which are not serious violent offenses. The sentences for the other current serious violent offenses will be calculated using an offender score of zero.

Additionally, there is a mandatory sentencing enhancement if certain offenses were committed with a firearm or deadly weapon. This enhancement is served in total confinement and must run consecutively to all other sentencing provisions, including any other firearm or deadly weapon sentence enhancements. It applies to any felony except: Possession of a Machine Gun, Possession of a Stolen Firearm, Drive-By Shooting, Theft of a Firearm, Unlawful Possession of a Firearm in the first and second degree, or Use of a Machine Gun in a Felony. The firearm enhancement is five years for a class A felony, three years for a class B felony, and 18 months for a class C felony. For a deadly weapon, the enhancement is two years, 18 months, or one year, depending on the class of the offense.

#### Exceptional Sentences.

If there are substantial and compelling reasons justifying an exceptional sentence, the court can impose a sentence outside the standard sentence range. Exceptional sentences must be for a determinate term and cannot exceed the statutory maximum or a mandatory minimum for the offense. One mitigating factor which may be found by the court and used to impose an exceptional sentence below the standard sentence range is if the operation of the multiple offense policy results in a presumptive sentence that is clearly excessive. In interpreting the meaning of this factor, Washington courts have found that a sentence is clearly excessive if the difference between the effects of the first criminal act and the cumulative effect of the subsequent criminal acts is nonexistent, trivial, or trifling.

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### **Summary of Substitute Bill:**

#### Consecutive Sentencing.

In calculating the sentence range for multiple serious violent offenses, the sentence for the most severe offense will be calculated using the higher offender score. "Most severe offense" is defined to mean the serious violent offense that has the highest sentence range for an offender score computed using the offender's prior convictions and current convictions that

are not serious violent offenses. This definition allows for consideration of anticipatory offenses, which do not have a seriousness level, but are given a sentencing range of 75 percent of the range for the completed offense.

Exceptional Sentences.

A court may impose a mitigated exceptional sentence if the operation of the consecutive or concurrent sentence policy results in a clearly excessive sentence. The consecutive or concurrent sentence policy includes the mandatory consecutive sentences for serious violent offenses and certain firearm offenses, as well as the mandatory sentence enhancements for firearms and deadly weapons. When a court imposes a sentence below the standard range in a case where consecutive sentences create a sentence that is clearly excessive, the period of confinement imposed must not be below the minimum sentence for the most serious current offense including any enhancements, and at least one enhancement per victim for deadly weapon and firearm enhancements.

**Substitute Bill Compared to Original Bill:**

The substitute bill requires a court to consider whether a presumptive sentence is clearly excessive in light of the stated purposes of the Sentencing Reform Act.

When a court imposes a sentence below the standard range in a case where consecutive sentences create a sentence that is clearly excessive, the period of confinement imposed must not be below the minimum sentence for the most serious current offense including any enhancements, and at least one enhancement per victim for deadly weapon and firearm enhancements.

The substitute bill strikes the definition of "clearly excessive."

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill was previously at the request of the Sentencing Guidelines Commission. It has to do with the stacking of weapons enhancements. One course of conduct where no one was harmed can lead to decades worth of time in prison. There are examples where offenders engaged in one course of conduct with multiple co-defendants that lead to an excessive amount of prison time. Going to trial can lead to a much greater sentence due to the enhancements. This bill would give the court more discretion. A possible amendment to this bill could make it retroactive.

There was a case where a man and multiple co-defendants committed a crime with multiple firearms. His original sentence was 81 years. This was because of the stacking law. This individual did not want the plea deal of five years that was offered. Reasonable doubt was obvious but the prosecutor said he was guilty because of mere presence. The sentence was shocking. The sentence currently has been reduced to 45.5 years. Taxpayers are going to pay for this excessive sentence. This young man will not know what to do or where to go when he gets out because he will have been in prison for so long. Other people are going to go through this if this is not changed.

In another case, a sentence did not reflect the severity of the crime due to enhancements. The case involved multiple assaults and use of a handgun. The defendant was found guilty on four counts. The crime involved a bar fight with a man pointing the gun at people outside of a bar. The defendant got 33 months for the assaults. The judge added three years for each count for the firearms. This was four times the sentence for the underlying crimes. Taxpayers will spend \$500,000 to keep the inmate behind bars. There are no checks on prosecutors to make sure they appropriately charge. The state needs a system that ensures that appropriate sentences are rendered based on the facts in the case. Application of judicial discretion should become part of the process.

(In support with amendments) Mandatory stacking of enhancements was created as part of the "Hard Time for Armed Crime" initiative. There is no safety valve in it. There should be one. Prosecutors need to charge for what actually happened. Sometimes the enhancements draw up to four times the length of sentence for the underlying crime. There should be an amendment to collapse enhancements. Multiple victims need to be recognized. There has been some confusion about the prior case mentioned. It was a very aggressive crime—an armed home invasion. People were held at gun point. There were four co-defendants. This was not just mere presence. It was the prosecutors who suggested a way to reduce the sentence by 20 years. The current sentence is appropriate.

However, there does need to be some relief. There is some controversy because the stacking law was a voter initiative. Retroactivity and resentencing is not appropriate. The previous cases were negotiated with the prosecutors dropping charges and making concessions. The clemency process already applies to this.

(Opposed) None.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; Vicky Wiebe; and Scott Poepping.

(In support with amendments) Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.