

# SENATE BILL REPORT

## SB 5036

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As of January 21, 2015

**Title:** An act relating to body armor.

**Brief Description:** Creating a sentence enhancement for body armor.

**Sponsors:** Senators O'Ban and Dammeier.

**Brief History:**

**Committee Activity:** Law & Justice: 1/19/15.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Lindsay Erickson (786-7465)

**Background:** The Sentencing Reform Act provides for adjustments of sentences based on certain factors. For instance, a sentence will be enhanced if the offender or accomplice was armed with a firearm or with another deadly weapon while committing certain felonies.

If an offender or an accomplice was armed with a firearm and the offender is being sentenced for a felony other than possession of a machine gun, possessing 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 offender is eligible for a firearm enhancement. If the offender or an accomplice was armed with a firearm during the offense, the following additional times are added to the standard sentence range:

- five years for any felony defined under any law as a class A felony, or with a statutory maximum sentence of at least 20 years, or both;
- three years for any felony defined under any law as a class B felony, or with a statutory maximum sentence of ten years, or both; or
- 18 months for any felony defined under any law as a class C felony, or with a statutory maximum sentence of five years, or both.

An offender is eligible for a deadly weapon enhancement if the offender or an accomplice was armed with a deadly weapon other than a firearm and the offender is being sentenced for any felony except possession of a machine gun, possessing 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. If the offender or an accomplice was armed with a

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deadly weapon other than a firearm, the following additional times must be added to the standard sentence range:

- two years for any felony defined under any law as a class A felony, or with a statutory maximum sentence of at least 20 years, or both;
- one year for any felony defined under any law as a class B felony, or with a statutory maximum sentence of ten years, or both; or
- six months for any felony defined under any law as a class C felony, or with a statutory maximum sentence of five years, or both.

If the offender is being sentenced for any firearm or deadly weapon enhancements and the offender was previously sentenced for any deadly weapon enhancements, all firearm or deadly weapon enhancements are double the listed length. All firearm and deadly weapon enhancements are mandatory, served in total confinement, and run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements. If the standard sentence range exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

**Summary of Bill:** A procedure is established for determining whether the accused or accomplice was armed with a firearm or deadly weapon at the time of the offense while wearing body armor. In a criminal case where a special allegation has been made, a court must make a finding of fact, or in a jury trial, the jury must find a special verdict, that: (1) an offender was armed with a firearm or deadly weapon at the time of the offense; and (2) the underlying offense was committed while the offender was wearing body armor.

Body armor is defined as any clothing or devices designed primarily to prevent penetration by a projectile fired from a firearm or by a knife, sword, or other cutting or stabbing instrument, which is worn by an individual for that specific purpose in the commission of a crime.

Firearm and deadly weapon sentence enhancements are doubled if an offender or an accomplice was wearing body armor at the time of the offense. An offender is not eligible for good-time credits or earned release time for the portion of the offender's sentence resulting from body armor enhancements.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on August 1, 2015.

**Staff Summary of Public Testimony:** PRO: This bill makes sense for public safety and for the safety of officers. Those wearing body armor wear it because they are engaging in violent activity, and this enhancement would discourage such activity.

CON: Penalties quickly add up beyond what may be the maximum punishment on enhancements alone. This is an enhancement to an enhancement. There is nothing in this enhancement that ties directly to culpability. A suggested proposal would be to limit this to certain offenses, not all offenses. It would also make more sense to use body armor as an aggravator in sentencing, not an enhancement.

**Persons Testifying:** PRO: Senator O'Ban, prime sponsor; Larry Haskell, Spokane County Prosecutor.

CON: James Laukkonen, WA Defender Assn., WA Assn. of Criminal Defense Lawyers.