
Public Safety Committee

HB 1169

Brief Description: Concerning sentencing enhancements.

Sponsors: Representatives Goodman, Davis, Dolan, Simmons, Bateman, Lekanoff, Springer, Gregerson, Senn, Fitzgibbon, Ramos, Frame, Ramel, Peterson, Lovick, Ryu, Callan, Slatter, Duerr, Ormsby, Macri and Hackney.

Brief Summary of Bill

- Eliminates the sentencing enhancement for certain controlled substance violations committed in protected zones, as well as the sentencing enhancement for involving a minor in a criminal street gang-related felony.
- Removes the requirement that a court order multiple firearm or deadly weapons enhancements to be served consecutively, and instead leaves the matter within the discretion of the court.
- Provides a process for resentencing persons who are currently serving a sentence that includes multiple, consecutive firearm enhancements.
- Removes the restrictions on partial confinement and earned early release for all sentencing enhancements and applies the changes retroactively to all incarcerated persons.

Hearing Date: 1/22/21

Staff: Omeara Harrington (786-7136).

Background:

Criminal Sentences.

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

Sentences for most felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months of confinement, 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. While the grid provides the base sentence, additional sentencing policies can increase or decrease a sentence. This includes, for example, enhancements, exceptional sentences, and alternative sentences.

Sentencing Enhancements.

Statutory sentencing enhancements add a specified amount of confinement time to an offender's base sentence in qualifying cases.

Firearms and Deadly Weapons. A period of additional confinement time must be added to the standard sentence range any time the offender or an accomplice was armed with a firearm or a deadly weapon at the time of the offense. The additional time applied varies according to the classification of the underlying offense and the weapon involved.

When the offender or an accomplice was armed with a firearm at the time of the offense, the court must impose:

- an additional five years for any class A felony;
- an additional three years for any class B felony; and
- an additional 18 months for any class C felony.

When the offender or an accomplice was armed with a deadly weapon other than a firearm at the time of the offense, the court must impose:

- an additional two years for any class A felony;
- an additional one year for any class B felony; and
- an additional six months for any class C felony.

With respect to both firearm and deadly weapon enhancements, if the offender has been previously sentenced for a firearm or deadly weapon enhancement, the additional time must be doubled.

Controlled Substances Violations in Protected Zones. An additional 24 months must be added to the standard sentence range for any offense involving certain controlled substances violations committed in a protected zone, including manufacture, sale, or delivery of a controlled substance and possession with intent to manufacture, sell, or deliver a controlled substance. Protected zones include: schools and school buses; the area within 1,000 feet of a school bus route or school grounds; public parks; any public housing project designated as a drug-free zone; public transit vehicles and stop shelters; civic centers; and the area within 1,000 feet of a civic center if designated by the local governing authority.

Involving a Minor in a Criminal Street Gang-Related Felony. The standard sentence range must be multiplied by 125 percent for any offense in which the offender was over the age of 18 at the time of the offense and the offense was a criminal street gang-related felony for which the

offender compensated, threatened, or solicited a minor in order to involve the minor in the offense.

A criminal street gang-related offense is an offense committed: for the benefit of, at the direction of, or in association with any criminal street gang; with the intent to promote, further, or assist criminal conduct of the gang; or for other specified reasons such as gaining admission or promotion within the gang, increasing the gang's size or dominance, exacting revenge for the gang, intimidating or eliminating witnesses against the gang, or providing some other benefit to the gang.

Impaired Driving. A two-year enhancement is added to the standard sentence range for Vehicular Homicide committed under the influence of alcohol or any drug (Vehicular Homicide-DUI) for each prior impaired driving related offense. A 12-month enhancement is added to the standard sentence for Vehicular Homicide-DUI, Vehicular Assault-DUI, felony Driving Under the Influence, or felony Actual Physical Control of a Vehicle While Under the Influence for each passenger under the age of 16 in the defendant's vehicle at the time of the offense.

Sexual Motivation. A period of additional confinement time must be added to the standard sentence range any time an offense was committed with sexual motivation, which means that one of the purposes for which the offender committed the crime was for his or her sexual gratification. The additional time applied varies according to the classification of the underlying offense. The court must add:

- an additional two years for any class A felony;
- an additional 18 months for any class B felony; and
- an additional one year for any class C felony.

If the offender has been previously sentenced for a sexual motivation enhancement, the additional time must be doubled.

Stacking of Sentencing Enhancements.

Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently.

However, there are some exceptions to this general rule requiring sentences, or portions of sentences, to be served consecutively. This policy is sometimes referred to as "stacking."

Certain enhancements must be served consecutively to both the base sentence as well as all other sentencing provisions, including other enhancements of the same type, including firearm and deadly weapons enhancements, impaired driving enhancements, and sexual motivation enhancements. The stacking of these enhancements is mandatory.

Partial Confinement.

For certain offenders, a portion of a term of total confinement may be converted to partial confinement. Partial confinement is confinement for up to one year in a facility operated or contracted by the state or other unit of government, or in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement may include work release, home detention, work crew, or electronic monitoring. During the

period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the DOC. If the offender violates the rules of the partial confinement program, the offender may be required to serve the remainder of the term in total confinement.

Portions of an offender's sentence attributed to certain sentencing enhancements, including firearm and weapons enhancements, impaired driving enhancements, and sexual motivation enhancements, must be served in total confinement and are not eligible for partial confinement.

Earned Release.

An offender's felony sentence may be reduced by "earned release time," which is earned through good behavior and good performance, as determined by the correctional agency that has jurisdiction over the offender. The total percentage of the sentence that may be reduced by earned release time depends on various factors, including the underlying offense and the date of conviction. An offender may not receive any earned release time for the portion of the sentence that results from certain enhancements specified in statute, including the firearm and deadly weapons enhancements, the impaired driving enhancements, and the sexual motivation enhancement.

Summary of Bill:

Elimination of Certain Sentencing Enhancements.

Two sentencing enhancements are eliminated: the sentencing enhancement for certain controlled substances violations committed in protected zones, and the sentencing enhancement for involving a minor in a criminal street gang-related felony.

Removal of Mandatory Stacking for Certain Enhancements.

Mandatory stacking of firearms and deadly weapons enhancements is eliminated. Instead, the court may, but is not required to, order that these enhancements are served consecutively.

Any person who is currently serving a sentence involving multiple, consecutive firearm or deadly weapons enhancements may petition the sentencing court for resentencing on the basis that the consecutive enhancements no longer advance the interests of justice. Any applicable county prosecuting attorney may file a petition on the same basis.

The sentencing court may grant or deny the petition. If the petition is granted, the court may, in its discretion, order the firearm or deadly weapons to be served concurrently. The new sentence imposed, if any, cannot be greater than the initial sentence. Whenever a resentencing hearing is scheduled, the prosecuting attorney must attempt to notify victims and their survivors of the hearing, and must provide access to available victim advocates and related services. Additionally, the court must provide victims and survivors an opportunity to present a statement.

Allowing Partial Confinement and Earned Release on Enhancements.

All sentencing enhancements are eligible for partial confinement and earned release, including

firearm and weapons enhancements, impaired driving enhancements, and sexual motivation enhancements, for which partial confinement and earned release are expressly prohibited under current law.

The elimination of restrictions on partial confinement and earned release apply retroactively to any person currently serving an applicable sentence. The Department of Corrections must recalculate the earned release date for any qualifying offender over a period of six months following the effective date of the bill. The recalculation must not extend the term of incarceration beyond that to which the offender is currently subject.

Appropriation: None.

Fiscal Note: Requested on January 13, 2021.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 5, relating to earned release time, which due to a delayed effective date in prior legislation takes effect January 1, 2022.