

SENATE BILL REPORT

ESHB 1169

As of February 21, 2022

Title: An act relating to sentencing enhancements.

Brief Description: Concerning sentencing enhancements.

Sponsors: House Committee on Public Safety (originally sponsored by 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 History: Passed House: 2/12/22, 53-45.

Committee Activity: Law & Justice: 2/22/22.

Brief Summary of Bill

- Eliminates sentencing enhancements for certain controlled substance violations committed in protected zones and for involving a minor in a criminal street gang-related felony.
- Allows courts to order multiple firearm or deadly weapons enhancements run consecutively or concurrently to each other.
- Allows for resentencing for individuals currently serving sentences that include multiple consecutive firearms enhancements.
- Eliminates restrictions on partial confinement and earned release for sentencing enhancements and applies the changes retroactively to all incarcerated individuals.

SENATE COMMITTEE ON LAW & JUSTICE

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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 part of the legislation nor does it constitute a statement of legislative intent.

Background: In 1981, Washington adopted the sentencing reform act which sought to provide consistent standards for judges to consider when determining the appropriate sentence in a criminal case. Since adoption, courts determine most sentences for felony convictions by reference to a sentencing grid. The grid provides a standard range of months of confinement, and a particular individual's sentence range on the grid is determined by evaluating the seriousness level of the offense committed and the individual's offender score, which is based on the individual's criminal history. Once a base sentencing range is established, it is within the discretion of the court to determine the individual's specific sentence within that range.

Beyond a base standard-range sentence, in certain circumstances the court may sentence an individual to a period of confinement outside the standard range. For example, a court may impose a treatment-based alternative to a standard-range sentence, or a court may, given the particular underlying facts of the case, impose an exceptional sentence either above or below the standard sentence range.

A court may impose a sentencing enhancement in addition to a standard-range sentence under certain circumstances. These sentence enhancements add a specified period of confinement to an individual's base sentence and are determined by the existence of particular facts in the case. For a court to impose a sentencing enhancement, the facts supporting the enhancement must have been plead and proven beyond a reasonable doubt.

Firearms and Deadly Weapons Enhancements. If it is plead and proven that an offender or an accomplice was armed with a firearm at the time of the offense, the court must impose:

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

If it is plead and proven that an 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 of confinement for any class A felony;
- an additional one year of confinement for any class B felony; and
- an additional six months confinement for any class C felony.

If the individual has previously been sentenced for a firearm or deadly weapon enhancement, the additional time must be doubled.

Controlled Substances Violations in Protected Zones Enhancement. If it is plead and proven that an individual committed certain controlled substance crimes within a protected zone, the court must add an additional 24 months to the individual's standard sentence. 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 projects 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 Enhancement. 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, exacting revenge for the gang, intimidating or eliminating witnesses, or providing some other benefit to the gang. If it is plead and proven that an individual, over the age of 18 at the time of the offense, involved a minor in a criminal street gang-related felony, the individual's standard sentence must be multiplied by 125 percent.

Impaired Driving Enhancement. For each passenger in an individual's vehicle under the age of 16 at the time of an offense, the court must impose a 12-month enhancement to a standard sentence for convictions for vehicular homicide committed under the influence, vehicular assault committed with under the influence, felony driving under the influence, or felony physical control of a vehicle while under the influence.

Sexual Motivation Enhancement. If it is plead and proven that an individual committed an offense with sexual motivation, meaning one of the purposes of committing the crime was the perpetrator's sexual gratification, the court must impose a sentencing enhancement as follow:

- 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 individual has previously been sentenced for a sexual motivation enhancement, the additional time is doubled.

Multiple Enhancements. When a court orders multiple sentences for an individual at one sentencing hearing, those sentences are presumed to run concurrent to each other. In certain circumstances, sentencing enhancements must be served consecutively to both the base sentence as well as all other sentencing provisions, including other enhancements of the same type.

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 Department of Corrections. 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 Early 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: The sentencing enhancement for certain controlled substances violations committed in protected zones and the sentence enhancement for involving a minor in a criminal street gang-related felony are eliminated.

Mandatory consecutive sentences for firearm and deadly weapon enhancements are eliminated. The court may, but is not required to, order these enhancements be served consecutively. Any person currently serving a sentence that includes consecutive firearm or deadly weapons enhancements may petition the sentencing court for resentencing on the grounds that the consecutive enhancements no longer serve the interests of justice. The applicable county prosecutor may file a petition on the same grounds.

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. The court must provide victims and survivors an opportunity to present a statement. If the court grants the petition, the court may order the firearm or deadly weapons enhancement be served concurrently.

The restrictions on partial confinement and earned release for all sentencing enhancements are removed. While this applies to impaired driving enhancements, if an individual who has been sentenced to one or more impaired driving enhancements has three or more prior impaired driving offenses, the enhancement or enhancements must still be served in total confinement.

The elimination of restrictions on partial confinement and earned release apply retroactively to any person currently serving an applicable sentence. The Department of Corrections has discretion to recalculate the earned release date for any qualifying offender over a period of 12 months following the effective date of the bill. The recalculation must not extend the individual's term of incarceration beyond that which the individual is currently subject.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.