

# HOUSE BILL REPORT

## SHB 1268

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**As Passed House:**

March 6, 2023

**Title:** An act relating to sentencing enhancements.

**Brief Description:** Concerning sentencing enhancements.

**Sponsors:** House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Goodman, Simmons, Walen and Eslick).

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 1/23/23, 2/2/23 [DPS].

**Floor Activity:**

Passed House: 3/6/23, 53-42.

**Brief Summary of Substitute Bill**

- Eliminates the sentencing enhancements for involving a minor in a criminal street gang-related felony and for certain controlled substance violations committed in protected zones.
- Removes the requirement that a court order multiple firearm or deadly weapons enhancement to be served consecutively.
- Modifies the restrictions on partial confinement and earned early release for sentencing enhancements.

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**HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

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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.*

**Minority Report:** Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

**Staff:** Martha Wehling (786-7067).

**Background:**

Criminal Sentences.

Crimes are classified as misdemeanors, gross misdemeanors, or felonies. The classification of a crime generally determines the maximum term of confinement. When a person is convicted of a felony, the Sentencing Reform Act applies. The Sentencing Reform Act is a determinate sentencing system in which a judge selects a particular sentence from a standard range. The standard range is determined by reference to a statutory grid, which is based on the person's criminal history (converted into an offender score) and the severity of the offense (according to designated seriousness levels). Seriousness levels range from I to XVI, and offender scores can range from zero to nine or more points. A higher seriousness level or offender score results in a longer sentence. 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 a person's base sentence.

*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 person 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 person 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.

*Firearms and Deadly Weapons.* A period of additional confinement time must be added to the standard sentence range any time the person 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 person 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 person or an accomplice was armed with 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 person has been previously sentenced for a firearm or deadly weapon enhancement, the additional time must be doubled.

*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 person committed the crime was for 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 person has been previously sentenced for sexual motivation 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.

Stacking of Sentencing Enhancements.

Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently. However, there are some exceptions that allow 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 weapon enhancements, impaired driving enhancements, and sexual motivation enhancements. The stacking of these enhancements is mandatory.

#### Partial Confinement.

In certain situations, 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, a person may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the Department of Corrections. If the person violates the rules of the partial confinement program, the person may be required to serve the remainder of the term in total confinement.

Portions of a person'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.

A person'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 person. 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. A person 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 weapon enhancement, the impaired driving enhancement, and the sexual motivation enhancement.

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

#### Elimination of Sentencing Enhancements.

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

#### Removal of Mandatory Stacking for 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.

Allowing Partial Confinement and Earned Release on Enhancements.

Sentencing enhancements are eligible for partial confinement and earned release, including firearm and deadly weapons enhancements, impaired driving enhancements, and sexual motivation enhancements. However, if a person has more than two alcohol and drug violations, or more than one Vehicular Homicide-DUI, the person's impaired driving enhancements must be served in total confinement.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 4, 2023.

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

**Staff Summary of Public Testimony:**

(In support) Stacking of firearm and weapon enhancements has resulted in clearly excessive sentences, where the enhancement can be four to five times longer than the sentence. This creates emotional and financial damages to families. The length of criminal sentences has increased over time and are three times higher than other countries. More people are imprisoned with life sentences than for all crimes committed in 1970. Extremely long sentences do not contribute to public safety, do not deter crime, and do not reduce recidivism. Judges should have the discretionary authority to order that sentences are served concurrently, when appropriate. The gang-related felony is a poorly-worded enhancement that has only been used once in the prior 20 years. Prosecutors have other tools available to achieve the same results, and should not be the only people in the court system with discretion. Sentencing enhancements are disproportionately applied to persons of color, and protected zones have been a source of racial disparity in sentencing. Other resources are available to protect children, and the law has not been achieving its intended purpose. It is a good policy to allow reentry through partial confinement because it allows people to rejoin society, join work release, and reintegrate into the community while being monitored.

(Opposed) It is absurd that sentences would be loosened for firearms crimes while an assault weapons ban is supported. People who commit violent crimes should be sentenced for life. Members of the Sentencing Review Task Force agree that not all sentences should be consecutive, and that agreement should be honored, but two other provisions of the bill need to be addressed. If sentences are not consecutive, an individual should be required to serve the sentence in total confinement and without earned early release time. A person convicted of a fourth driving under the influence should not be given leniency.

(Other) The Criminal Sentencing Task Force has previously addressed this issue.

Prosecutors agree that judiciary discretion can be helpful in determining whether a sentence is excessive, particularly when an individual receives an offer, chooses not to accept it, and is convicted at trial with a very long sentence, such as for firearm enhancements. There is not currently a good definition for excessive, but factors should include whether a firearm is used with multiple distinct victims, or when multiple firearms are stolen but not used. Mandatory stacking may be appropriate when there are distinct instances and victims.

**Persons Testifying:** (In support) Representative Roger Goodman, prime sponsor; Melody Simle, Washington Criminal Sentencing Task Force; and David Trieweiler, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.

(Opposed) Amy Freedheim, King County Prosecuting Attorney's Office; Joe Kunzler; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** Jamarsae Brown; Maria Davissi; Timothy Clayton; Silas Davis; Rita Ferguson; Sanders Davis; Sharita Brown; Kimberly Capers; Lisa Rowden Clayton; and Kenneisha Brown.