

# SENATE BILL REPORT

## SHB 1268

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As of March 20, 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:** Passed House: 3/6/23, 53-42.

**Committee Activity:** Law & Justice: 3/23/23.

### Brief Summary of Bill

- Allows an incarcerated individual to earn good time credits for the portion of their sentence attributable to a sentencing enhancement, and removes requirements for serving the portion of the sentence attributable to the enhancement in total confinement.
- Allows multiple sentencing enhancements to be served concurrently, instead of consecutively.
- Repeals the school zone enhancement for narcotics offenses and the enhancement for involving a minor in a criminal street gang-related felony.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Kevin Black (786-7747)

**Background:** Criminal Sentences. Washington State uses a determinate sentencing system for felonies in which a judge's sentencing discretion is confined by a standard range determined by reference to a statutory grid, based on the person's criminal history—converted to an offender score—and a seriousness level for the offense designated

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by the Legislature. While the sentencing grid provides the base sentence, additional sentencing policies may apply to increase or decrease the sentence. This includes exceptional sentences, which are discretionary based on evidence and statutory factors, and sentencing enhancements and alternative sentences, which the court must impose if circumstances related to the enhancement or alternative sentence are plead and proven to the trier of fact.

Sentencing Enhancements. Statutory sentencing enhancements add a specified amount of confinement time to a person's base sentence, if the factual basis for the enhancement is plead and proven beyond a reasonable doubt. Some sentencing enhancements are described below.

*Firearms and Deadly Weapons.* This enhancement applies any time the defendant or an accomplice was armed with a firearm or a deadly weapon at the time of the offense.

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

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

When the defendant 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 sentence for Vehicular Homicide committed under the influence of alcohol or drugs (Vehicular Homicide-DUI) for each prior impaired driving-related offense. A 12-month enhancement applies for each passenger under the age of 16 in the defendant's vehicle at the time of the offense.

*Sexual Motivation.* This enhancement applies any time an offense was committed with sexual motivation, which means one of the purposes for which the person committed the crime was for sexual gratification. The court must add:

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

If the person has been previously sentenced with a sexual motivation enhancement, the

additional time must be doubled.

*Controlled Substances Violations in Protected Zones.* An additional 24 months must be added to the sentence for specified controlled substance offenses 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 1000 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 1000 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 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 to involve the minor in the offense. A criminal street gang-related offense is defined as 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.

Stacking of Sentencing Enhancements. Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently. However, exceptions apply that allow sentences, or portions of sentences, to be served consecutively, a policy referred to as "stacking." State law requires mandatory stacking for certain enhancements, including multiple enhancements of the same type, including firearm and deadly weapon enhancements, impaired driving enhancements, and sexual motivation enhancements.

Partial Confinement. In certain situations, a portion of a term of confinement may be converted to partial confinement, which means 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, also referred to as good 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 a 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 Bill:** An incarcerated individual may receive good time credits or earned release time on a firearm, deadly weapon, impaired driving, or minor child enhancement.

If the total sentence with a sentencing enhancement exceeds the statutory maximum for the offense, the sentence must be reduced to the statutory maximum.

Requirements for sentencing enhancements to be served in total confinement are removed, except that sentencing enhancements related to the offense of Vehicular Homicide-DUI must be served in total confinement if the defendant had two prior driving under the influence-related offenses, or one prior vehicular homicide while under the influence offense.

A court may order firearm or deadly weapon enhancements for a person sentenced with multiple enhancements to be served either concurrently or consecutively. The 24-month sentencing enhancement for manufacturing methamphetamine with a child on the premises is not required to run consecutively to all other sentencing provisions.

The 24-month sentencing enhancement for committing a violation of the uniform controlled substances act in a protected zone, including in a school, school bus, 1000 foot perimeter of a school bus stop or school boundary, public park, housing project designated as a drug-free zone, public transit vehicle, public transit stop shelter, or civic center designated as a drug-free zone is repealed.

The sentencing enhancement for an adult involving a minor in a criminal street gang-related felony is repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.