

# SENATE BILL REPORT

## SB 5056

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As of February 7, 2023

**Title:** An act relating to a special allegation for habitual property offenders.

**Brief Description:** Establishing a special allegation for habitual property offenders.

**Sponsors:** Senators Padden, Fortunato, Gildon and Wilson, L..

**Brief History:**

**Committee Activity:** Law & Justice: 2/07/23.

**Brief Summary of Bill**

- Creates a special allegation for a habitual property offender.
- Requires a person found beyond a reasonable doubt to be a habitual property offender to be sentenced to an additional 24 months in total confinement for a Class B felony, and an additional 12 months for a Class C felony.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Ryan Giannini (786-7285)

**Background:** When a person is convicted of a felony crime, the court must impose a sentence within the standard sentencing range as established by the seriousness level of the crime and the person's offender score. The seriousness level of each felony crime is established by statute, and the offender score is based on the person's criminal history. The highest offender score contained on the standard sentencing grid is nine points.

The standard sentencing range established by the sentencing grid is adjusted under certain circumstances. Enhancements that increase the standard sentencing range apply generally in the following circumstances:

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- crimes involving a firearm or deadly weapon;
- crimes committed while held in county jail or prison;
- drug offenses;
- vehicular offenses while under the influence;
- crimes with a sexual motivation;
- certain sex crimes perpetrated against a minor;
- criminal street gang-related felony offenses soliciting the involvement of a minor;
- eluding a police vehicle; and
- robbery of a pharmacy.

Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed sentencing range must be submitted to the fact finder and proved beyond a reasonable doubt. A prosecutor must file the special allegation, and prove to the fact finder the special circumstance exists beyond a reasonable doubt for the enhancement to be applied to the standard sentencing range. Generally, a standard sentence range may not exceed the statutory maximum sentence for an offense.

Some enhancements are required by statute to be served in total confinement, and are required to run consecutively to all other sentencing provisions. Total confinement is a period during which the offender must serve the confinement period inside the physical boundaries of a jail or prison for 24 hours per day.

A court has full discretion to depart from mandatory sentencing enhancements, and to consider the circumstances surrounding the youth of a person being sentenced in adult court for a crime committed under the age of 18.

Current law also permits the court to impose a sentence outside of the standard sentencing range for a felony offense if the court finds there are aggravating or mitigating circumstances justifying a departure from the sentencing range.

The statutory maximum sentence for a Class B felony is ten years. The statutory maximum for a Class C felony is five years.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** A prosecutor may file a special allegation to increase an offender's standard felony sentencing range if the offender is a habitual property offender. A habitual property offender is defined as follows:

- the present felony for which the offender is being sentenced is residential burglary, burglary in the second degree, theft in the first degree, theft in the second degree, theft of a firearm, unlawful issuance of checks or drafts, organized retail theft, theft with special circumstances, or mail theft;
- has an offender score of nine points or higher;
- at least five of the points in the person's offender score results from any combination

- of the property crimes listed above; and
- the person has committed three or more property crime offenses within 180 days.

If the court finds beyond a reasonable doubt from the evidence that the offender is a habitual property offender, and the offender is being sentenced for a Class B felony, 24 months are added to the standard sentencing range.

If the court finds beyond a reasonable doubt from the evidence that the offender is a habitual offender, and the offender is being sentenced for a Class C felony, 12 months are added to the standard sentencing range.

The offender's sentence cannot exceed the statutory maximum for the crime. All habitual property offender enhancements are mandatory and must be served in total confinement. If eligible, an offender serving a habitual property offender enhancement may be granted an extraordinary medical placement.

**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.

**Staff Summary of Public Testimony On Proposed Substitute:** PRO: There is a crisis of property crimes. There are a handful of people who are committing a large portion of property crimes. These are career criminals whose jobs are to steal. This bill targets these habitual property offenders. These are people who cannot keep their hands off of other people's stuff and are people who are already maxed out on the offender score. The property crime rate will decrease substantially as a result. This bill is limited because an offender must commit three property crimes in 180 days. The enhancement is not mandatory—it is discretionary by the prosecutor, and requires that the prosecutor prove that all the criteria have been met beyond a reasonable doubt. The court must also make a finding that all requirements have been met. This bill will put food on children's plates by decreasing expenses related to property crime, and ensure the most vulnerable are taken care of. This bill should have a provision that requires a prosecutor to produce and make public any decline memo when they have a case that qualifies for this enhancement and choose not to seek it.

CON: Property crime is driven by genuine human suffering and the imposition of additional suffering in the form of more incarceration cannot be the solution. The individuals targeted by this bill have lived long and hard lives. A great many of these people have mental health conditions, addictions, or both. Incarceration does not reduce crime or recidivism. There is always a new crime allegedly exploding in frequency and the purported solution has always

been to increase sentences. Longer sentences do not make us safer. The problem is not a lack of tools. There are already doubling and tripling provisions to enhance a person's sentence. This bill will further racial disparity in a system already rife with it. Black Washingtonians make up less than 5 percent of the population but 13 to 15 percent of arrestees for burglary, theft, larceny, and forgery. This bill will disproportionately result in longer sentences for black and brown people. This bill requires that a sentencing judge makes a finding that someone is a habitual offender, which is unconstitutional. That finding must be made by a jury.

**Persons Testifying:** PRO: Senator Mike Padden, Prime Sponsor; James McMahan, WA Assoc Sheriffs & Police Chiefs; Mark Johnson, Washington Retail Association; Jessica Laughery, Hutton Settlement.

CON: David Trieweiler, Washington Association of Criminal Defense Lawyers/Washington Defender Association; Brian Flaherty, King County Department of Public Defense.

**Persons Signed In To Testify But Not Testifying:** No one.