

# HOUSE BILL REPORT

## HB 1178

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**As Reported by House Committee On:**  
Community Safety

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

**Brief Description:** Concerning sentencing enhancements.

**Sponsors:** Representatives Goodman, Hackney, Simmons and Peterson.

**Brief History:**

**Committee Activity:**

Community Safety: 1/20/25, 2/6/25 [DPS].

**Brief Summary of Substitute Bill**

- Eliminates 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.
- Removes the requirement that courts order certain sentencing enhancements to be served consecutively, and instead leaves the matter within the discretion of the court.
- Makes firearm and deadly weapon enhancements eligible for partial confinement and earned early release.

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### HOUSE COMMITTEE ON COMMUNITY SAFETY

**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 Obras.

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

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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.*

**Staff:** Michelle Rusk (786-7153).

**Background:**

Criminal Sentences.

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 a person's base sentence.

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

*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: (1) for the benefit of, at the

direction of, or in association with any criminal street gang; (2) with the intent to promote, further, or assist criminal conduct of the gang; or (3) 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.

*Controlled Substances Violations Involving Minors or in Protected Zones.* An additional 24 months must be added to the standard sentence range for any offense involving controlled substances violations if the offense also was either: (1) related to manufacture of methamphetamine in the presence of a minor; or (2) 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: (1) schools and school buses; (2) the area within 1,000 feet of a school bus route or school grounds; (3) public parks; (4) any public housing project designated as a drug-free zone; (5) public transit vehicles and stop shelters; (6) civic centers; and (7) 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 and all other sentencing provisions, as well as enhancements of the same type, including firearm and deadly weapon 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 weapon 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 firearm and deadly weapon enhancements.

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**Summary of Substitute Bill:**

Elimination of Sentencing Enhancements.

Two sentencing enhancements are eliminated: (1) the sentence enhancement for certain controlled substances violations committed in protected zones; and (2) the sentence 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, and enhancements for controlled substances violations related to manufacture of methamphetamine in the presence of a minor, is eliminated. Courts may, but are not required to, order that multiple firearm and deadly weapon enhancements are served consecutively or concurrently.

Allowing Partial Confinement and Earned Release on Enhancements.

Firearm and deadly weapon sentencing enhancements are eligible for partial confinement and earned release time.

**Substitute Bill Compared to Original Bill:**

The substitute bill:

- reinstates the requirement that specified impaired driving enhancements must be served in total confinement, and are ineligible for good time credits or earned early release time;
- reinstates the requirement that sexual motivation enhancements must be served in total confinement and are ineligible for earned early release time; and
- reinstates the requirement that firearm and deadly weapon enhancements run consecutively to all other sentencing provisions and clarifies that when a person is sentenced to multiple firearm and deadly weapon enhancements, courts may order multiple enhancements to run concurrently or consecutively to each other.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 6, 2025.

**Effective Date of Substitute Bill:** The bill contains multiple effective dates. Please see the

bill.

**Staff Summary of Public Testimony:**

(In support) This policy recommends unanimous recommendations concerning sentencing enhancements. In 2018 the Sentencing Guidelines Commission (SGC) reviewed the Sentencing Reform Act, which included reviewing enhancements. The SGC was unanimous on these two issues: (1) eliminate mandatory stacking of enhancements; and (2) make enhancements eligible for earned release time. After completing its report, the Criminal Sentencing Task Force was created by the Legislature to take the SGC's work further and provide recommendations for reducing sentencing implementation complexities and errors and improving public safety. The bill contains four recommendations from that task force's 2020 report.

The bottom line of this policy is judicial discretion, and providing sentencing courts with the ability to tailor a sentence more loosely to an individual and the circumstances of the offense. Courts sometimes want to go higher, or lower, than what an enhancement allows, and under the current law, they are not able to exercise this discretion. This bill is about allowing judges to make that choice.

Another aspect of this policy is the significant racial disparities in sentencing enhancements. While enhancements are overall statistically declining, this decline comes from reductions in giving enhancements to white offenders. These disparities do not align with any increase in firearms behavior amongst the population and only reflect structural bias in our system. Racial disparities are larger amongst those serving the longest sentences, and mandatory stacking of enhancements is one of three key policies driving this disparity. Longer sentences do not deter more than shorter ones. There is no empirical support that sentencing enhancements deter crimes or improve public safety.

(Opposed) Our carceral system serves many purposes, one of which is rehabilitation and another of which is protecting society. Sentencing enhancements are about protecting society. Allowing good time or partial confinement on firearms enhancements is not a starting point for reaching agreement on this policy. While the criminal street gang enhancement is not useable in its current form, prosecutors review and prosecute an increasingly large number of violent crimes, which typically involve a firearm. This is a significant reminder of the harm that firearm violence causes to communities, and in particular communities of color. There has been work for many years through the criminal sentencing taskforce work to look at how to allow sentencing enhancements to run concurrently, but there should be some additional guardrails to make sure, for example, when there are multiple victims that multiple firearms enhancements remain mandatory.

(Other) There is significant racial disproportionality in the administration of sentencing enhancements. A 2021 report analyzing felony sentences in Washington state found that in fiscal year 2019, white defendants accounted for 65 percent of all non-drug felony

sentences, but only 48 percent of all sentences with a sentencing enhancement for non-drug felony sentences. The odds of a black or hispanic defendant receiving a sentencing enhancement were 230 percent greater than the odds of a white defendant receiving one. Sentencing enhancements are extremely disproportional, which is especially evident with firearm and deadly weapon enhancements, and which Department of Corrections reports have confirmed.

**Persons Testifying:** (In support) Representative Roger Goodman, prime sponsor; Percy Levy, Washington Defender Association; Jim Chambers; Adam Heyman, WDA and WACDL; Heather Evans, University of Washington; Keri-Anne Jetzer, WA State Sentencing Guidelines Commission; Melody Simle; Heather Kelly, League of Women Voters of Washington; Karl Jones; Jenice Crews; and Anthony Powers, American Equity and Justice Group.

(Opposed) Russell Brown, WA Association of Prosecuting Attorneys; and James McMahan, WA Assoc Sheriffs and Police Chiefs.

(Other) Lauren Knoth-Peterson, PhD, Public Safety Policy and Research Center, Office of Financial Management.

**Persons Signed In To Testify But Not Testifying:** None.