

**HOUSE BILL ANALYSIS
ESB 5695**

Title: An act relating to crimes involving firearms.

Brief Description: Increasing sentences for crimes involving firearms.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Roach, Long, Oke, Schow, Morton, Benton, and Hochstatter).

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

Hearing Date: February 20, 1998.

Prepared By: Mark G. Hamilton, Counsel (786-7310).

Background: *Mandatory Sentencing Enhancements for Deadly Weapons.* The state's sentencing guidelines provide a standard range of imprisonment to which courts must sentence criminals convicted of felonies, based on the seriousness of the current crime, as well as other factors, such as prior criminal convictions. The Hard Time for Armed Crime Act (Initiative Measure No. 159) requires mandatory sentencing increases of up to five years which must be added to the sentence of a person convicted of a committing felony while using a firearm or deadly weapon. (RCW 9.94A.310(3) & (4).)

However, the underlying sentence, combined with the enhancement, cannot exceed the maximum presumptive sentence under the guidelines, unless the offender is classified as a persistent offender. (RCW 9.94A.310(3)(g) & (4)(g).)

The law is unclear, with regard to multiple concurrent convictions, whether a weapon enhancement must be applied to the underlying crime (*i.e.*, the crime in which the weapon was used) or may be applied separately at the end of the total term for all the offenses combined. This may affect the length of the sentence imposed. The Washington Court of Appeals has held that A firearms enhancement must run consecutively to the sentence imposed on the underlying crime and to any other mandatory sentences imposed under the statute; *i.e.*, each firearm enhancement for multiple current offenses must run consecutively. (*State v. Lewis*, 86 Wash.App. 716, 937 P.2d 1325 (1997).)

Summary: *Enhancement Added to End of Total Sentence.* If an offender is convicted of more than one offense, and there is a firearm or deadly weapon enhancement for at least one of those offenses, then the enhancement must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to the firearm or deadly weapon enhancement. (Amends RCW 9.94A.310(3) & (4).)

Mandatory Confinement and Consecutive Terms. The firearm and deadly weapon enhancements are mandatory, must be served in total confinement,

and must be served consecutively to all other sentencing provisions, including other weapon enhancements. (Amends RCW 9.94A.310(3)(e) & (4)(e).)

No Reduction of Enhancement. If the firearm or deadly weapon enhancement, when added to the sentence for the underlying crime, would exceed the statutory maximum allowed for the offense, the enhancement may not be reduced. (Amends RCW 9.94A.310(3)(g) & (4)(g).)

Multiple Firearm Offenses. If a person is convicted of two or more current offenses, and also is convicted of (1) unlawful possession of a firearm in the first or second degree and (2) theft of a firearm or possession of a stolen firearm, then the person must serve consecutive sentences for each other felony offense and for each firearm unlawfully possessed. (Amends RCW 9.94A.400(1)(c).)

- Rules Authority:** No.
- Fiscal Note:** Requested on February 16, 1998. (Available for prior versions of the bill.)
- Effective Date:** Ninety days after adjournment of session in which bill is passed.