

HOUSE BILL REPORT

HB 1862

As Reported by House Committee On: Public Safety

Title: An act relating to determining sentences for multiple offenses and enhancements.

Brief Description: Determining sentences for multiple offenses and enhancements.

Sponsors: Representative Goodman; by request of Sentencing Guidelines Commission.

Brief History:

Committee Activity:

Public Safety: 2/19/13, 1/29/14, 1/31/14 [DPS].

Brief Summary of Substitute Bill

- Allows the court to impose a mitigated exceptional sentence because of the "stacking" sentencing of firearm or deadly weapon enhancements.
- Clarifies a court's discretion to impose a mitigated exceptional sentence if the operation of the consecutive or concurrent sentence policy results in a clearly excessive sentence.
- Defines "clearly excessive" to only include two factors: (1) the difference between the effects of one criminal act and the cumulative effects of all the criminal acts is nonexistent, trivial, or trifling; and (2) the offender was convicted of multiple offenses against a single victim, arising from a single act, or arising from a series of acts within a short time.
- Allows for consideration of anticipatory offenses as the "most severe offense" for the purpose of calculating sentence ranges for multiple serious violent offenses.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Ross and Takko.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Sarah Koster (786-7303).

Background:

Under the Sentencing Reform Act, sentences for typical felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, 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.

Consecutive Sentencing.

Current offenses sentenced together are generally served concurrently, rather than consecutively, with the exceptions being: (1) two or more serious violent offenses arising from separate and distinct criminal conduct; and (2) current convictions for Theft of a Firearm and Unlawful Possession of a Firearm. Under those exceptions, the sentences are served consecutively.

The sentence for multiple serious violent offenses is calculated separately for each offense. For the offense with the highest seriousness level, the sentencing range will be calculated using an offender score which incorporates the offender's prior criminal history and any other current offenses which are not serious violent offenses. The sentences for the other current serious violent offenses will be calculated using an offender score of zero.

Additionally, there is a mandatory sentencing enhancement if certain offenses were committed with a firearm or deadly weapon. This enhancement is served in total confinement and must run consecutively to all other sentencing provisions, including any other firearm or deadly weapon sentence enhancements. It applies to any felony except: Possession of a Machine Gun, Possession of a Stolen Firearm, Drive-By Shooting, Theft of a Firearm, Unlawful Possession of a Firearm in the first and second degree, or use of a machine gun in a felony. The firearm enhancement is five years for a class A felony, three years for a class B felony, and 18 months for a class C felony. For a deadly weapon, the enhancement is two years, 18 months, or one year, depending on the class of the offense.

Exceptional Sentences.

If there are substantial and compelling reasons justifying an exceptional sentence, the court can impose a sentence outside the standard sentence range. Exceptional sentences must be for a determinate term and cannot exceed the statutory maximum or a mandatory minimum for the offense.

One mitigating factor which may be found by the court and used to impose an exceptional sentence below the standard sentence range is if the operation of the multiple offense policy results in a presumptive sentence that is clearly excessive. Washington courts have interpreted the availability of this factor narrowly, so as not to apply to defendants who have been sentenced to multiple serious violent offenses (*State v. Galindo*, 2011 Wash. App. Lexis 631 (Wash. Ct. App. Mar. 15, 2011) (unpublished)) and to only apply to cases in which "the difference between effects of the first criminal act and the cumulative effect of the subsequent criminal acts is nonexistent, trivial or trifling." (*State v. Kinneman*, 120 Wn. App. 327, 84 P.3d 882 (2003)).

Summary of Substitute Bill:

Consecutive Sentencing.

In calculating the sentence range for multiple serious violent offenses, the sentence for the "most severe offense" will be calculated using the higher offender score. "Most severe offense" is defined to mean the serious violent offense that has the highest sentence range for an offender score computed using the offender's prior convictions and current convictions that are not serious violent offenses. This definition allows for consideration of anticipatory offenses, which do not have a seriousness level, but are given a sentencing range of 75 percent of the range for the completed offense.

Exceptional Sentences.

A court may impose a mitigated exceptional sentence if the operation of the consecutive or concurrent sentence policy results in a clearly excessive sentence. The consecutive or concurrent sentence policy includes the mandatory consecutive sentences for serious violent offenses and certain firearm offenses, as well as the mandatory sentence enhancements for firearms and deadly weapons.

The court may find that such sentence is "clearly excessive," justifying a mitigated exceptional sentence if the presumptive sentence does not accurately reflect the offender's culpability because of the following factors:

1. The difference between the effects of one criminal act and the cumulative effects of all the criminal acts is nonexistent, trivial, or trifling.
2. The offender was convicted of multiple offenses against a single victim, arising from a single act, or arising from a series of acts within a short time.

Substitute Bill Compared to Original Bill:

The substitute bill makes necessary technical updates and narrows the scope of a "clearly excessive" finding to only apply when both, rather than either, of the mitigating factors is present.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is a first step towards addressing the piling on of sentences and stacking of enhancements when there might only have been one course of conduct which resulted in

harm, but the sentence might be considered to be unreasonably long. The Sentencing Guidelines Commission came to consensus on this and asked that we bring this bill forward.

(In support with amendment(s)) This is both a significant proposal and a positive development. When hard time for armed crime passed, there was a stacking requirement. This is great, but sometimes it is very long. This was not in the original Sentencing Reform Act (SRA), so the length of these stacked offenses is not reflected in SRA's balancing of sentence ranges. However, the bill should be amended so that a consecutive sentence applied because of multiple victims is not clearly excessive.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor.

(In support with amendment(s)) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.