

# SENATE BILL REPORT

## SB 5703

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As Reported by Senate Committee On:  
Law & Justice, February 16, 2017

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

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

**Sponsors:** Senator Padden.

**Brief History:**

**Committee Activity:** Law & Justice: 2/07/17, 2/16/17 [DP-WM, DNP].

**Brief Summary of Bill**

- Creates a special allegation for a habitual property offender when the offender has a criminal history score of nine points or higher relating from certain property crimes.
- Requires a person found by a preponderance of the evidence 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

**Majority Report:** Do pass and be referred to Committee on Ways & Means.  
Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel, Frockt and Wilson.

**Minority Report:** Do not pass.  
Signed by Senators Pedersen, Ranking Minority Member; Darneille.

**Staff:** Shani Bauer (786-7468)

**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.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

The standard sentencing range established by the sentencing grid is adjusted under certain circumstances. Adjustments that increase the standard sentencing range apply in the following circumstances: crimes involving a firearm or deadly weapon, drug crimes, vehicular homicide, crimes committed while held in county jail or prison, crimes with a sexual motivation, certain sex crimes perpetrated against a child, eluding police, 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 statutory maximum 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 that the special circumstance exists beyond a reasonable doubt in order for the adjustment to be applied to the sentencing standard range. Some adjustments are required by statute to be served in total confinement. Total confinement is a period during which the offender is not eligible for alternatives or good time and must serve the total confinement period inside the physical boundaries of a jail or prison for 24 hours per day.

Current law also permits the court to impose a sentence outside of the standard sentencing range for a felony offense if the court finds that there are substantial and compelling reasons justifying an exceptional sentence. The length of an exceptional sentence is subject to appeal by the defendant because it involves the exercise of judicial discretion.

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:** 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 a person as follows:

- has an offender score of nine points or higher;
- 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;
- at least nine of the points in the person's offender score result from any combination of the property crimes listed above; and
- the person has either received drug treatment related to any felony conviction or has refused drug treatment related to any felony conviction.

If the court finds by a preponderance of 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 by a preponderance of 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.

**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:** PRO: Spokane County has a significant problem with property crimes which could be addressed by this bill. It would be helpful to include motor vehicle crimes as well, but that would likely drive a higher fiscal note. The language regarding a person who has refused drug treatment in the past is concerning. This could be difficult to prove. The Kent Police Chief testified over the interim as to the notion of free crimes. A habitual property offender who is awaiting prosecution knows that they are at the top of the range and that there will be no additional penalties for committing additional crimes. Offenders go on a property crimes spree prior to trial and will typically refer to these crimes as “free crimes.” There should be additional penalties for these offenders.

CON: Washington already has some of the longest sentences for property offenders. An offender can easily reach nine points the first time in the criminal justice system by racking up multiple counts. The exceptional sentence schematic already allows the court to increase the sentence for a frequent flyer. Having the court operate as the fact finder for the sentencing enhancement is also problematic. This is not allowed under *Blakely* and the Legislature should expect to see a court challenge if this bill passes. Washington is the only state where supervision is not an option for property offenders even though supervision is shown to be highly effective. The Legislature should focus its resources on supervision rather than increasing prison sentences. There is a tipping point where further incarceration does no good.

**Persons Testifying:** PRO: James McMahan, WA Association of Sheriffs and Police Chiefs.

CON: Ramona Brandes, WA Association of Criminal Defense Lawyers, WA Defender Association.

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