

SENATE BILL REPORT

SHB 1268

As Reported by Senate Committee On:
Law & Justice, March 28, 2023

Title: An act relating to sentencing enhancements.

Brief Description: Concerning sentencing enhancements.

Sponsors: House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Goodman, Simmons, Walen and Eslick).

Brief History: Passed House: 3/6/23, 53-42.

Committee Activity: Law & Justice: 3/23/23, 3/28/23 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Allows an incarcerated individual to earn good time credits for the portion of their sentence attributable to a sentencing enhancement, and removes requirements for serving the portion of the sentence attributable to the enhancement in total confinement.
- Allows multiple sentencing enhancements to be served concurrently, instead of consecutively.
- Repeals the enhancement for involving a minor in a criminal street gang-related felony.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators McCune, Torres, Wagoner and Wilson, L..

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.

Minority Report: That it be referred without recommendation.

Signed by Senator Padden, Ranking Member.

Staff: Kevin Black (786-7747)

Background: Criminal Sentences. Washington State uses a determinate sentencing system for felonies in which a judge's sentencing discretion is confined by a standard range determined by reference to a statutory grid, based on the person's criminal history—converted to an offender score—and a seriousness level for the offense designated by the Legislature. While the sentencing grid provides the base sentence, additional sentencing policies may apply to increase or decrease the sentence. This includes exceptional sentences, which are discretionary based on evidence and statutory factors, and sentencing enhancements and alternative sentences, which the court must impose if circumstances related to the enhancement or alternative sentence are plead and proven to the trier of fact.

Sentencing Enhancements. Statutory sentencing enhancements add a specified amount of confinement time to a person's base sentence, if the factual basis for the enhancement is plead and proven beyond a reasonable doubt. Some sentencing enhancements are described below.

Firearms and Deadly Weapons. This enhancement applies any time the defendant or an accomplice was armed with a firearm or a deadly weapon at the time of the offense.

When the defendant or an accomplice was armed with a firearm at the time of the offense, the court must impose:

- five years for any class A felony;
- three years for any class B felony; and
- 18 months for any class C felony.

When the defendant or an accomplice was armed with 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.

Impaired Driving. A two-year enhancement is added to the sentence for Vehicular Homicide committed under the influence of alcohol or drugs (Vehicular Homicide-DUI) for each prior impaired driving-related offense. A 12-month enhancement applies for each passenger under the age of 16 in the defendant's vehicle at the time of the offense.

Sexual Motivation. This enhancement applies any time an offense was committed with sexual motivation, which means one of the purposes for which the person committed the crime was for sexual gratification. The court must add:

- two years to any class A felony;
- 18 months to any class B felony; and
- one year to any class C felony.

If the person has been previously sentenced with a sexual motivation enhancement, the additional time must be doubled.

Controlled Substances Violations in Protected Zones. An additional 24 months must be added to the sentence for specified controlled substance offenses 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:

- schools and school buses;
- the area within 1000 feet of a school bus route or school grounds;
- public parks;
- any public housing project designated as a drug-free zone;
- public transit vehicles and stop shelters;
- civic centers; and
- the area within 1000 feet of a civic center if designated by the local governing authority.

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 to involve the minor in the offense. A criminal street gang-related offense is defined as an offense committed:

- for the benefit of, at the direction of, or in association with any criminal street gang;
- with the intent to promote, further, or assist criminal conduct of the gang; or
- 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.

Stacking of Sentencing Enhancements. Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently. However, exceptions apply that allow sentences, or portions of sentences, to be served consecutively, a policy referred to as "stacking." State law requires mandatory stacking for certain enhancements, including multiple enhancements of the same type, including firearm and deadly weapon enhancements, impaired driving enhancements, and sexual motivation enhancements.

Partial Confinement. In certain situations, a portion of a term of confinement may be

converted to partial confinement, which means 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 weapons enhancements, impaired driving enhancements, and sexual motivation 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, also referred to as good 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 a sentence that results from certain enhancements specified in statute, including the firearm and deadly weapon enhancement, the impaired driving enhancement, and the sexual motivation enhancement.

Summary of Amended Bill: An incarcerated individual may receive good time credits or earned release time on a firearm, deadly weapon, impaired driving, or minor child enhancement.

Requirements for sentencing enhancements to be served in total confinement are removed, except that sentencing enhancements related to the offense of Vehicular Homicide-DUI must be served in total confinement if the defendant had two prior driving under the influence-related offenses, or one prior vehicular homicide while under the influence offense.

A court may order firearm or deadly weapon enhancements for a person sentenced with multiple enhancements to be served either concurrently or consecutively. The 24-month sentencing enhancement for manufacturing methamphetamine with a child on the premises may run concurrently to all other sentencing provisions.

The sentencing enhancement for an adult involving a minor in a criminal street gang-related felony is repealed.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Removes the repeal of the 24-month protected zone enhancement relating to certain controlled substance offenses.
- Removes provisions which would not allow a total sentence including a sentencing enhancement to exceed the statutory maximum sentence for the offense.

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 Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill comes from the Criminal Sentencing Task Force which just completed three years of work, and came at the suggestion of county prosecutors who noted there are many clearly excessive sentences which are not in the interest of justice. Judges will have discretion to order enhancements to run consecutively in egregious cases. The protected zone enhancement is so expansive that it covers the entire cities of Seattle and Tacoma, and has resulted in the incarceration of young black men from urban areas in a grossly disproportionate manner. There are more targeted offenses with long sentences which can be charged if a person is involving minors in a drug offense. The enhancement for involving a minor in gang activity is poorly written, has never been used, and is just clogging up the criminal code. Allowing earned release time reduces complexity and the opportunity for errors in sentence calculations. The Department of Corrections has had to hire dozens of people to hand-calculate sentences. This bill changes the rules but does not take away the prosecutor's ability to negotiate with the defendant to obtain the sentence they want. Long sentences given to teenagers do not reduce crime or make the community safer. We set up individuals for failure when we do not allow a gradual transition back to the community through partial release programs. This bill gives leniency to a population that feels neglected and shunned by society. Youth have the ability to reform and should be able to take advantage of the services offered in Juvenile Rehabilitation community facilities. Average sentence lengths have tripled since the 1980s. Studies show extremely long sentences do not deter crime, do not deter recidivism, and are useless because most persons age out of crime in their 40s. Stacked enhancements usually apply to one incident, with one weapon, and not multiple incidents. Persons with excellent defenses should be able to submit those to a jury without risking a de facto life sentence. The impaired driving enhancement is distinct from the firearm enhancement and those enhancements do need to be served consecutively. Our church committee is dismayed by excessive sentences which disproportionately affect people of color. Unjustly long sentences have done enormous harm to minority communities, created spiritual and psychological harm for prisoners, been expensive for taxpayers, and done little to support public safety. This is a common sense alternative that will help future prisoners. My husband has served 20 years of a 41-year sentence related to

a property crime with no injuries due to multiple firearm enhancements and stacking laws.

CON: As long as the enhancements are consecutive to the underlying sentence, we are comfortable with judges deciding whether the enhancements should be consecutive or concurrent. We object to allowing partial confinement and to allowing earned early release for enhancements. Enhancements are a good preventative measure. Why should firearm enhancements be reduced while gun restrictions are being proposed for law-abiding citizens?

OTHER: Generally we support the policy changes, and we support the firearm enhancement de-stacking. Most excessive sentences are attributable to stacking. The school zone enhancement applies differently across the state because of population density. The gang enhancement is not workable and prosecutors have never used it and have other tools. It's easy to increase sentence and say you're being tough without reducing crime.

Persons Testifying: PRO: Representative Roger Goodman, Prime Sponsor; Amy Freedheim, Senior Deputy Prosecutor King County; David Trieweiler, Washington Association of Criminal Defense Lawyers/Washington Defender Association; Anthony Smith, Green Hill School's Capitol Classroom; Caya Lenay, Green Hill School's Capitol Classroom; Ronald Ackerson Jr, Green Hill School's Capitol Classroom; John Bean; Toni Kelly-king, Impacted family member.

CON: Jeffrey Slotnick; Eric Pratt, America; James McMahan, Washington Association of Sheriffs & Police Chiefs; Gabriel Jacobs.

OTHER: Jon Tunheim, Thurston County Prosecutor/Washington Association of Prosecuting Attorneys.

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