

Restore Justice Foundation

Criminal Justice Issues and Prisoners' Rights

<https://restorejustice.org/know-more-firearm-sentence-enhancements/>

Policy Issue Resources

The criminal legal and prison systems in Illinois can often feel like a jigsaw puzzle, full of interlocking laws, policies, and eccentricities that can be overwhelming even to experienced advocates. Restore Justice publishes a series of [Know More](#) posts. Each post will provide a straightforward overview of a different aspect of the Illinois criminal legal system.

In Illinois, judges are required to add 15, 20, or 25 years to life to the prison sentences of defendants convicted of certain felonies if the defendant was found to have possessed or discharged a firearm during the crimes commission. This firearm enhancement applies to the following offenses:

The severity of the enhancement is based on how the firearm is used. Fifteen years are added if a firearm is possessed but not discharged, 20 if discharged with no injuries, and 25 to life if discharged to cause death or grievous injury.

Years added through a sentence enhancement may be reduced by sentence credit. However, since all enhancement-eligible offenses are affected by Illinois truth-in-sentencing laws (which limit the amount of time a person can earn off their sentence), individuals will serve 85% to 100% of this enhancement in essentially all applicable cases.

First and foremost: are these enhancements a meaningful, cost-effective way to improve public safety and reduce gun crime?

Research is mixed. While a 2011 study from the University of Pennsylvania concluded that [enhancements led to a small decline in gun robberies](#), [other studies](#) reached opposite conclusions. Most notably, a 2015 report from the [National Research Councils Committee on Law and Justice](#) found [no evidence that firearm enhancements reduced gun crime in any significant way](#) (the full report is behind a paywall, but you can find key points cited in [the bill analyses from Californias recently passed SB 620 on reforming firearm enhancements](#)).

More broadly, the philosophy of extreme firearm enhancements runs counter to nationally-cited research showing that [policies that increase the severity of punishments do little to meaningfully reduce crime](#).

So where does that leave us?

Unquestionably, no other states mandatory enhancements are as extreme as those in Illinois. This distinction boils down to the combination of two factors: extreme length and rigid mandatory nature.

Among U.S. states, Illinois is *the* extreme outlier in terms of the severity of its mandatory firearm enhancements. This is not hyperbole. **At 15 years automatically added for firearm possession during a felony, Illinois has the highest mandatory enhancement for possession in the nation.**

In other states, the enhancement for firearm possession tends to range from 1 to 5 years, before even accounting for the fact that many states do not criminalize firearm possession or allow judges discretion to withhold the enhancement.

Outside Illinois, only four other states have mandatory possession minimums that come close. Firearm possession during a felony carries a 10-year minimum in both Florida and California, [though California recently made all of its various firearm enhancements fully discretionary](#). Rhode Island also requires an additional 10 years for a first firearm offense, but this only applies in cases of use, not necessarily for possession alone.

What about discharge, brandishing, and other forms of use? For the purposes of sentencing, few states outside Illinois distinguish between possession, discharge, and use (which may or may not encompass all, both, or some of the above).

Still, if we compare Illinois to the many states that distinguish between the various states that penalize felony use, we find again a general range of 1 to 5 years, compared to the 20 or 25-year enhancement for firearm discharge in Illinois.

As before, only Florida and California come close (both at 25 years), and only Florida is the enhancement also mandatory in nature. Alaska also stands out for requiring a mandatory enhancement of 25 to 35 years for firearm use during the commission of a limited set of crimes involving the sexual exploitation, abuse, or assault of minors. Outside of these offenses, however, Alaskas minimum enhancement for a first firearm-assisted crime is 5 years.

Until a policy change 2015, Illinois judges had no choice but to indiscriminately apply our states extreme firearm enhancements (judges can now depart from the enhancement in cases involving juvenile defendants).

But not every state applies enhancements in such a rigid way. Many grant some degree of discretion to judges and sentencing courts in terms of how they implement enhancements. These states permit, as follows:

Full to near-full discretion to apply or not apply an enhancement. Arkansas gives judges the discretion to add anywhere from 0 to 15 years to a first offense sentence if firearms are employed during a felony. California, Idaho, Oregon, Vermont, West Virginia, Wisconsin, and Wyoming also grant judges a similar level of discretion for a first firearm offense. Among these states, Arkansas and Oregon require a mandatory enhancement for second and subsequent offenses (10 years for Arkansas, 5 for Oregon).

Discretion to depart with on-the-record rationale. New York gives sentencing courts the choice to depart from applying a 5-year enhancement for criminal firearm use, provided that the court state on record that the enhancement would be unduly harsh and that not imposing [the enhancement] would be consistent with the public safety. Louisiana also gives judges to depart from the firearm enhancement provided they state for the records the reasons a sentence is excess, as does Kansas for its own version of a firearm enhancement.

Discretion to apply the enhancement as a concurrent sentence. In Oklahoma and South Carolina, individuals who commit felonies with firearms are required to serve a minimum 10 or 5 years, respectively. However, judges can choose whether those sentences will run concurrently or consecutively. This means that for serious offenses with longer base sentences, judges are not required to further increase sentence length in a, which rarely leads to substantial rehabilitative or public health benefit. Similarly, Alabama requires that should a firearm be used, the minimum for the base sentence be changed to 10 or 20 years (based on offense severity). It is not an additional term. Louisiana use the same changed minimum approach, though it also applies to lesser offenses: at the lowest level, firearm possession changes a base sentences mandatory minimum to 2 years (5 years for non-discharge use, 10 for discharge, 15 for discharge leading to bodily injury).

No enhancement at all. Texas has no specific enhancement for firearm possession or use during the commission of another felony. Instead, the brandishing or use of a firearm is considered a misdemeanor (though lets be real, Texas has other issues).

While firearm enhancements of some kind are mandatory in most states, keep in mind again that in most states, the required sentencing penalty is much, much lower.

But progress is possible. In 2015, [Restore Justice supported a bill](#) that gave judges the choice to **NOT** apply the firearm sentence enhancement to juveniles. Since the bill became law, **judges chose to depart from applying the sentencing enhancement in 14 out of 16 homicide cases that Restore Justice could identify involving firearms and a juvenile defendant.** Judges likely also chose not to apply these enhancements to other eligible offenses committed by juveniles. These data were not immediately available.

Other states also administer their firearm enhancements in different ways. Here are some of the key distinctions beyond severity and discretion:

Higher penalties for more dangerous weapons. Many states apply a more serious enhancement when the firearm in question is of a certain class of more dangerous weapon, including everything from automatic firearms, assault weapons and machine guns, sawed-off shotguns, and silencers.

Higher penalties for subsequent firearm offenses. Many states scale the mandatory enhancement for second, third, or subsequent firearm-assisted felony offenses.

Higher penalties for more serious base offenses. Some states impose higher penalties for more serious offenses, or only permit the application of the enhancement to certain serious offenses (Illinois included). Alaska stands out in this regard, with a mandatory 25-35 additional years if a firearm is used for the commission of one of a set list of sexually exploitative or predatory offenses involving minors. Illinois also falls into this category, since firearm enhancements may only be applied to certain serious offenses.

No distinctions between firearm possession, use, or discharge. While some states distinguish between different classes of firearm use, most do not, and either penalize possession or use in a flat, uniform way.

Firearm use impacts sentencing matrix decisions. In some states that use a sentencing matrix (Maryland, Pennsylvania) to determine appropriate sentence length, firearm use or possession leads to a shift on the matrix towards more severe sentences, in addition to any other enhancements.

Increasing in felony grade. In some states that use felony classes to determine range of allowable sentences, firearm possession or use during a felony triggers a bump in felony class, effectively increasing the maximum (though not necessarily the minimum) allowable sentence.

Capping the enhancement to the maximum of base offense range. A few states explicitly state that should a firearm enhancement increase a sentence beyond the max of a base crime, the person will simply receive the max of a crimes range, rather than an enhancement beyond the max.

Enhancement versus separate offense. States vary in whether firearm use during a felony constitutes an enhancement or a distinct and separate offense, with its own minimum and maximum term.

Barred from parole, probation, or earned time. Many states include clauses in their firearm enhancement laws to ensure that time served for firearm enhancements cannot be reduced by sentence credit or parole.

Applying firearm enhancements to crimes that include firearms as an essential element. Many other states also make explicit in statutes whether their enhancements may be applied to offenses where firearm use is an essential element. For instance, in Tennessee, law requires that prosecutors must choose whether to charge a defendant with a higher offense that contains an essential firearm element (e.g. armed robbery) or instead a lower offense (e.g. robbery) with the application of a mandatory firearm enhancement. That said, some states including North Dakota and Idaho make explicit that firearm enhancements can and should be added regardless of whether the base crime includes an essential firearm element.

While other differences between firearm enhancement policy do exist, these are some of the key differentiating factors.

As far as we were able to find, there isn't a good resource to compare firearm enhancements across all fifty states. While we aren't lawyers, Restore Justice compiled a companion piece to this blog post that functions as a state-by-state comparison of firearm enhancements in all fifty states.

You can find and download the companion piece below. We hope it will provide a useful overview and starting point for your own advocacy and research!

Some general tips about doing your own online research on enhancements: not many states use the exact phrase firearm enhancement in their laws and statutes. Try searching for enhancers or firearm possession/use during the commission of a felony or similar phrases instead. Also, a state's enhancement laws relating to drug crimes are sometimes separated from the rest of the relevant laws, so keep that in mind.

Outside of that, [the Marshall Project](#) talks about the [political circumstances that give rise to firearm enhancements](#), while the [Texas Public Policy Foundation](#) examined firearm enhancements and [recommended against enhancements in their own state](#).

Linked Sources

To find the firearm enhancement statutes for different states, check out our companion piece.

(2017, May 18). Senate approves Judicial Discretion for Sentence Enhancements. Press release from Office of Sen. Steven Bradford. Retrieved from: <http://sd35.senate.ca.gov>.

Abrams, D. (2011). Estimating the deterrent effect of incarceration using sentencing enhancements. *American Economic Journal: Applied Economics*, 32(56).

Goldstein, D. (2015, October 14). Politicians still say longer prison sentences prevent gun violence but do they? The Marshall Project. Retrieved from: <https://www.themarshallproject.org>.

Marvell, T., & Moody, C. (1995). The impact of enhanced prison terms for felonies committed with guns. *Criminology*, 33(2).

National Institute of Justice. (2016, May). *Five things about deterrence*. Washington, DC: U.S. Department of Justice.

National Research Council. (2014) *The growth of incarceration in the United States: exploring causes and consequences*. Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

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