

CONCURRENT COMMUNITY SUPERVISION

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Concurrent Community Supervision without 24 Month Cap

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The Department of Corrections (DOC) is seeking changes to provide statutory clarification giving clear direction to DOC to set relationships between multiple terms of community custody as concurrent, unless the court expressly orders it consecutive.

Issue

Current statutes lack clarity on the relationship between a current term of community custody and prior, unfinished term(s) as to whether they should be served concurrently or consecutively.

Different counties have different variations on how the relationships between multiple terms of community custody are reflected on the Judgment and Sentence form (J&S). Most J&Ss are silent on the relationship, some have standard language on the form, and some hand write instructions on the form.

The lack of clarity in the current statute and J&S forms results in added complexity for staff and can result in sentences being carried out differently than the court intends. For individuals that have served their confinement and are releasing, DOC must interpret sentences that were imposed over a period of time for many causes that may have had different statutory requirements because of law changes and/or court decisions.

Proposed Changes

The changes clarify the presumption of community custody to be concurrent for both instances in which multiple terms of community custody can exist:

- (1) Between multiple current counts contained in one sentencing; and
- (2) When individuals have a current term of community custody ordered who also still have a term of community custody from a prior, unfinished term.

The changes allow the courts discretion to expressly order terms be served consecutively. The proposal includes a provision relating to sentences that were imposed prior to the effective date of this bill which gives clear direction to DOC to set the relationship between multiple causes and/or sentences as concurrent, unless the court had ordered otherwise.

Advantages to Proposed Changes

The proposed changes give clear direction regarding relationships between multiple terms of community custody. This change significantly reduces complexity for all records and community corrections staff and will reduce discrepancies in entering sentences into DOC's database and carrying out those orders.

Advantages to Proposed Changes, *continued...*

These changes also allow the Department to create a Reentry pathway to supervision in the community. It will allow us to frontload reentry services for all felony individuals releasing from confinement to supervision and allow the Department to focus on the most recent imposed sentence. With this modified focus staff will then be able to implement a change model of supervision that allows them to focus on reentry and transition, and utilize coaching and mentoring strategies to engage individuals on supervision immediately upon release, rather than focus on surveillance, apprehension or punitive aspects of supervision.

The changes would *increase community and staff safety* by allowing DOC the ability to impose and enforce conditions of supervision immediately for individuals who are serving multiple terms of supervision. Without this change, case management is difficult and can impact community safety when conditions of supervision cannot be imposed and enforced until a consecutive cause becomes active. For example, someone serving a DOSA sentence cannot be revoked for failing to complete treatment until the DOSA community supervision term becomes active.

Focus on period of reentry and transition. The period of transition from confinement to reentry into the community is the most important period of time. By refocusing agency resources and supervision strategies, it will increase the Departments ability to address reentry needs in the beginning of supervision and engage with the individual on those needs that will increase their ability to successfully reenter society.

A PEW publication “*Putting Public Safety First*”, states that “research clearly identifies the period immediately following release from prison and jail as a particularly high-risk time for offenders”.

For more information:

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Washington State Criminal Sentencing Task Force
Example Legislation: Concurrent Supervision
October 31, 2019

1 AN ACT Relating to community custody;

2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4

5 **Sec. 1.** RCW 9.94A.589 and 2015 2nd sp.s. c 3 s 13 are each
6 amended to read as follows:

7 (1)(a) Except as provided in (b), (c), or (d) of this
8 subsection, whenever a person is to be sentenced for two or more
9 current offenses, the sentence range for each current offense shall
10 be determined by using all other current and prior convictions as if
11 they were prior convictions for the purpose of the offender score:
12 PROVIDED, That if the court enters a finding that some or all of the
13 current offenses encompass the same criminal conduct then those
14 current offenses shall be counted as one crime. Sentences imposed
15 under this subsection shall be served concurrently. Consecutive
16 sentences may only be imposed under the exceptional sentence
17 provisions of RCW 9.94A.535. "Same criminal conduct," as used in
18 this subsection, means two or more crimes that require the same
19 criminal intent, are committed at the same time and place, and

1 involve the same victim. This definition applies in cases involving
2 vehicular assault or vehicular homicide even if the victims occupied
3 the same vehicle.

4 (b) Whenever a person is convicted of two or more serious
5 violent offenses arising from separate and distinct criminal
6 conduct, the standard sentence range for the offense with the
7 highest seriousness level under RCW 9.94A.515 shall be determined
8 using the offender's prior convictions and other current convictions
9 that are not serious violent offenses in the offender score and the
10 standard sentence range for other serious violent offenses shall be
11 determined by using an offender score of zero. The standard sentence
12 range for any offenses that are not serious violent offenses shall
13 be determined according to (a) of this subsection. All sentences
14 imposed under this subsection (1)(b) shall be served consecutively
15 to each other and concurrently with sentences imposed under (a) of
16 this subsection. However, unless the court expressly orders that the
17 community custody terms run consecutively to each other, such terms
18 shall run concurrently to each other even if the court orders the
19 confinement terms to run consecutively to each other.

20 (c) If an offender is convicted under RCW 9.41.040 for unlawful
21 possession of a firearm in the first or second degree and for the
22 felony crimes of theft of a firearm or possession of a stolen
23 firearm, or both, the standard sentence range for each of these
24 current offenses shall be determined by using all other current and
25 prior convictions, except other current convictions for the felony
26 crimes listed in this subsection (1)(c), as if they were prior
27 convictions. The offender shall serve consecutive sentences for each
28 conviction of the felony crimes listed in this subsection (1)(c),
29 and for each firearm unlawfully possessed.

30 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),
31 or 46.61.5055(4) shall be served consecutively to any sentences
32 imposed under RCW 46.20.740 and 46.20.750.

33 (2)(a) (~~Except as provided in (b) of this subsection,~~)
34 Whenever a person while under sentence for conviction of a felony

1 commits another felony and is sentenced to another term of
2 confinement, the latter term of confinement shall not begin until
3 expiration of all prior terms of confinement. However, any terms of
4 community custody shall run concurrently to each other, unless the
5 court pronouncing the current sentence expressly orders that they be
6 served consecutively.

7 (b) Whenever a second or later felony conviction results in
8 consecutive community ((~~supervision~~)) custody with conditions not
9 currently in effect, under the prior sentence or sentences of
10 community ((~~supervision~~)) custody the court may require that the
11 conditions of community ((~~supervision~~)) custody contained in the
12 second or later sentence begin during the immediate term of
13 community ((~~supervision~~)) custody and continue throughout the
14 duration of the consecutive term of community ((~~supervision~~))
15 custody.

16 (3) Subject to subsections (1) and (2) of this section, whenever
17 a person is sentenced for a felony that was committed while the
18 person was not under sentence for conviction of a felony, the
19 sentence shall run concurrently with any felony sentence which has
20 been imposed by any court in this or another state or by a federal
21 court subsequent to the commission of the crime being sentenced
22 unless the court pronouncing the current sentence expressly orders
23 that ((~~they~~)) the confinement terms be served consecutively to each
24 other. Unless the court expressly orders that the community custody
25 terms run consecutively, such terms run concurrently to each other
26 even if the court orders the confinement terms to run consecutively
27 to each other.

28 (4) Whenever any person granted probation under RCW 9.95.210 or
29 9.92.060, or both, has the probationary sentence revoked and a
30 prison sentence imposed, that sentence shall run consecutively to
31 any sentence imposed pursuant to this chapter, unless the court
32 pronouncing the subsequent sentence expressly orders that they be
33 served concurrently.

34

1 (5) (~~In the case of consecutive sentences,~~) All periods of
2 total confinement shall be served before any partial confinement,
3 community (~~restitution, community supervision~~) custody, or any
4 other requirement or conditions of any of the sentences. (~~Except~~
5 ~~for exceptional sentences as authorized under RCW 9.94A.535, if two~~
6 ~~or more sentences that run consecutively include periods of~~
7 ~~community supervision, the aggregate of the community supervision~~
8 ~~period shall not exceed twenty four months.~~)

9

10 **Sec. 2.** RCW 9.94B.050 and 2003 c 379 s 4 are each amended to
11 read as follows:

12 When a court sentences an offender to a term of total
13 confinement in the custody of the department for any of the offenses
14 specified in this section, the court shall also sentence the
15 offender to a term of community placement as provided in this
16 section. Except as provided in RCW 9.94A.501, the department shall
17 supervise any sentence of community placement imposed under this
18 section.

19 (1) The court shall order a one-year term of community placement
20 for the following:

21 (a) A sex offense or a serious violent offense committed after
22 July 1, 1988, but before July 1, 1990; or

23 (b) An offense committed on or after July 1, 1988, but before
24 July 25, 1999, that is:

25 (i) Assault in the second degree;

26 (ii) Assault of a child in the second degree;

27 (iii) A crime against persons where it is determined in
28 accordance with RCW (~~9.94A.602~~) 9.94A.825 that the offender or an
29 accomplice was armed with a deadly weapon at the time of commission;
30 or

31 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
32 sentenced under RCW 9.94A.660.

33

34

1 (2) The court shall sentence the offender to a term of community
2 placement of two years or up to the period of earned release awarded
3 pursuant to RCW 9.94A.728, whichever is longer, for:

4 (a) An offense categorized as a sex offense committed on or
5 after July 1, 1990, but before June 6, 1996, including those sex
6 offenses also included in other offense categories;

7 (b) A serious violent offense other than a sex offense committed
8 on or after July 1, 1990, but before July 1, 2000; or

9 (c) A vehicular homicide or vehicular assault committed on or
10 after July 1, 1990, but before July 1, 2000.

11 (3) The community placement ordered under this section shall
12 begin either upon completion of the term of confinement or at such
13 time as the offender is transferred to community custody in lieu of
14 earned release. When the court sentences an offender to the
15 statutory maximum sentence then the community placement portion of
16 the sentence shall consist entirely of the community custody to
17 which the offender may become eligible. Any period of community
18 custody actually served shall be credited against the community
19 placement portion of the sentence. The community placement shall run
20 concurrently to any period of probation, parole, community
21 supervision, community placement, or community custody previously
22 imposed by any court in any jurisdiction, unless the court
23 pronouncing the current sentence expressly orders that they be
24 served consecutively to each other.

25 (4) Unless a condition is waived by the court, the terms of any
26 community placement imposed under this section shall include the
27 following conditions:

28 (a) The offender shall report to and be available for contact
29 with the assigned community corrections officer as directed;

30 (b) The offender shall work at department-approved education,
31 employment, or community restitution, or any combination thereof;

32 (c) The offender shall not possess or consume controlled
33 substances except pursuant to lawfully issued prescriptions;

34

1 (d) The offender shall pay supervision fees as determined by the
2 department; and

3 (e) The residence location and living arrangements shall be
4 subject to the prior approval of the department during the period of
5 community placement.

6 (5) As a part of any terms of community placement imposed under
7 this section, the court may also order one or more of the following
8 special conditions:

9 (a) The offender shall remain within, or outside of, a specified
10 geographical boundary;

11 (b) The offender shall not have direct or indirect contact with
12 the victim of the crime or a specified class of individuals;

13 (c) The offender shall participate in crime-related treatment or
14 counseling services;

15 (d) The offender shall not consume alcohol; or

16 (e) The offender shall comply with any crime-related
17 prohibitions.

18 (6) An offender convicted of a felony sex offense against a
19 minor victim after June 6, 1996, shall comply with any terms and
20 conditions of community placement imposed by the department relating
21 to contact between the sex offender and a minor victim or a child of
22 similar age or circumstance as a previous victim.

23 (7) Prior to or during community placement, upon recommendation
24 of the department, the sentencing court may remove or modify any
25 conditions of community placement so as not to be more restrictive.

26

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94B
28 RCW to read as follows:

29 Except for exceptional sentences as authorized under RCW
30 9.94A.535, if two or more sentences that run consecutively include
31 periods of community supervision that the court has expressly
32 ordered to run consecutively, the aggregate of the community
33 supervision period shall not exceed twenty-four months.

34

1 NEW SECTION. **Sec. 4.** The department of corrections must
2 recalculate the scheduled end dates for terms of community custody,
3 community supervision, and community placement so that they run
4 concurrently to previously imposed sentences of community custody,
5 community supervision, community placement, probation, and parole,
6 unless the court pronouncing the current sentence has expressly
7 required such terms to run consecutively. This section applies to
8 each offender currently in confinement or under active supervision,
9 regardless of whether the offender is sentenced after the effective
10 date of this section, and regardless of whether the offender's date
11 of offense occurred prior to the effective date of this section or
12 after.

13

14 NEW SECTION. **Sec. 5.** The legislature declares that the
15 department of corrections' recalculations of community custody terms
16 pursuant to this act do not create any expectations that a
17 particular community custody term will end before July 1, 2020, and
18 offenders have no reason to conclude that the recalculation of their
19 community custody terms before July 1, 2020, is an entitlement or
20 creates any liberty interest in their community custody term ending
21 before July 1, 2020.

22

23 NEW SECTION. **Sec. 6.** The department of corrections has the
24 authority to begin implementing this act upon the effective date of
25 this section.

26

27 NEW SECTION. **Sec. 7.** This act applies retroactively and
28 prospectively regardless of the date of an offender's underlying
29 offense.

--- END ---

Public Safety Committee

HB 1678

Brief Description: Allowing multiple terms of community custody to be served concurrently.

Sponsors: Representative Pettigrew; by request of Department of Corrections.

Brief Summary of Bill

- Requires terms of community custody to run concurrently when an offender is serving consecutive terms of confinement for multiple sentences, unless a court specifically orders otherwise.
- Requires the Department of Corrections to recalculate the community custody terms of certain currently incarcerated or supervised offenders.

Hearing Date: 2/9/17

Staff: Kelly Leonard (786-7147).

Background:

Concurrent and Consecutive Sentences. Under the Sentencing Reform Act (SRA), judges determine sentences for felony offenses by selecting a determinate sentence from a range provided in statute. Ranges are determined by reference to a sentencing grid, which is based on the defendant's "offender score" and the "seriousness level" classification of the offense.

When an offender is convicted for multiple offenses in the same case, the court imposes separate sentences, including terms of confinement, for each offense. In this context, the SRA generally requires the sentences to run concurrently, which means the offender serves both sentences simultaneously, with the longest period of confinement controlling. However, the presence of multiple offenses affects the offender score, which lengthens the base sentences for both offenses.

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.

There are exceptions to the requirement for concurrent sentences in exceptional circumstances. For example, sentences must run consecutively if the offender committed two or more serious violent offenses arising from separate and distinct criminal conduct.

In the case of consecutive sentences, all periods of total confinement must be served before any periods of partial confinement, including community custody. If two or more sentences that run consecutively include periods of community custody, the aggregate of the community custody period shall not exceed 24 months.

Conviction for a New Offense While Still Serving a Sentence. If an offender commits a new offense while still serving his or her sentence for a previous felony, including during a period of community custody, the term of confinement for the new offense does not commence until the expiration of the sentence for the prior offense, unless a judge imposes an exceptional sentence based on mitigating circumstances.

Conviction of Multiple Offenses in Different Jurisdictions. When an offender receives multiple convictions from different jurisdictions for offenses committed while he or she was not serving a sentence, the sentences run concurrently, unless the court ordering the subsequent sentence expressly orders that they run consecutively.

Community Custody. Community custody is the portion of an offender's sentence served in the community under the supervision of the Department of Corrections (DOC). Courts are mandated to order community custody for offenders convicted of certain crimes. While on community custody, offenders are subject to a variety of conditions imposed by the court and DOC. The DOC must assess the offender's risk to reoffend and may establish and modify the offender's conditions of community custody based on the offender's risk to community safety and conditions imposed by the court.

The DOC may issue warrants for the arrest of any offender who violates a condition of community custody. If an offender violates the conditions, the offender may be required to serve up to the remaining portion of his or her sentence in confinement.

Summary of Bill:

The requirements for terms of community custody in the context of consecutive sentences are changed. The default rule is for terms of community custody for multiple sentences to run concurrently to each other, regardless if the terms of confinement are consecutive. However, the court may order community custody terms to run consecutively.

The DOC must recalculate the scheduled end dates for terms of community custody, community supervision, and community placement so that they run concurrently to previously imposed sentences of community custody, community supervision, community placement, probation, and parole, unless the court pronouncing the current sentence has expressly required the terms to run consecutively. This applies to all offenders currently in confinement or under active supervision.

The recalculations of community custody required by the bill do not create any expectations that a particular community custody term will end before July 1, 2017, and offenders have no reason

to conclude that the recalculation of their community custody terms is an entitlement or creates any liberty interest in their community custody term ending before July 1, 2017.

This bill applies retroactively and prospectively regardless of the date of an offender's underlying offense.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2017.

SENATE BILL 6518

State of Washington

65th Legislature

2018 Regular Session

By Senator Darneille; by request of Department of Corrections

1 AN ACT Relating to requiring multiple terms of community custody
2 or community supervision to run concurrently unless the court orders
3 otherwise; amending RCW 9.94A.589 and 9.94B.050; adding a new section
4 to chapter 9.94B RCW; creating new sections; and providing an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 9.94A.589 and 2015 2nd sp.s. c 3 s 13 are each
8 amended to read as follows:

9 (1)(a) Except as provided in (b), (c), or (d) of this subsection,
10 whenever a person is to be sentenced for two or more current
11 offenses, the sentence range for each current offense shall be
12 determined by using all other current and prior convictions as if
13 they were prior convictions for the purpose of the offender score:
14 PROVIDED, That if the court enters a finding that some or all of the
15 current offenses encompass the same criminal conduct then those
16 current offenses shall be counted as one crime. Sentences imposed
17 under this subsection shall be served concurrently. Consecutive
18 sentences may only be imposed under the exceptional sentence
19 provisions of RCW 9.94A.535. "Same criminal conduct," as used in this
20 subsection, means two or more crimes that require the same criminal
21 intent, are committed at the same time and place, and involve the

1 same victim. This definition applies in cases involving vehicular
2 assault or vehicular homicide even if the victims occupied the same
3 vehicle.

4 (b) Whenever a person is convicted of two or more serious violent
5 offenses arising from separate and distinct criminal conduct, the
6 standard sentence range for the offense with the highest seriousness
7 level under RCW 9.94A.515 shall be determined using the offender's
8 prior convictions and other current convictions that are not serious
9 violent offenses in the offender score and the standard sentence
10 range for other serious violent offenses shall be determined by using
11 an offender score of zero. The standard sentence range for any
12 offenses that are not serious violent offenses shall be determined
13 according to (a) of this subsection. All sentences imposed under this
14 subsection (1)(b) shall be served consecutively to each other and
15 concurrently with sentences imposed under (a) of this subsection.
16 However, unless the court expressly orders that the community custody
17 terms run consecutively to each other, the terms shall run
18 concurrently to each other even if the court orders the confinement
19 terms to run consecutively to each other.

20 (c) If an offender is convicted under RCW 9.41.040 for unlawful
21 possession of a firearm in the first or second degree and for the
22 felony crimes of theft of a firearm or possession of a stolen
23 firearm, or both, the standard sentence range for each of these
24 current offenses shall be determined by using all other current and
25 prior convictions, except other current convictions for the felony
26 crimes listed in this subsection (1)(c), as if they were prior
27 convictions. The offender shall serve consecutive sentences for each
28 conviction of the felony crimes listed in this subsection (1)(c), and
29 for each firearm unlawfully possessed.

30 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),
31 or 46.61.5055(4) shall be served consecutively to any sentences
32 imposed under RCW 46.20.740 and 46.20.750.

33 (2)(a) (~~Except as provided in (b) of this subsection,~~) Whenever
34 a person while under sentence for conviction of a felony commits
35 another felony and is sentenced to another term of confinement, the
36 latter term of confinement shall not begin until expiration of all
37 prior terms of confinement. However, any terms of community custody
38 shall run concurrently to each other, unless the court pronouncing
39 the current sentence expressly orders that they be served
40 consecutively.

1 (b) Whenever a second or later felony conviction results in
2 consecutive community (~~(supervision)~~) custody with conditions not
3 currently in effect, under the prior sentence or sentences of
4 community (~~(supervision)~~) custody the court may require that the
5 conditions of community (~~(supervision)~~) custody contained in the
6 second or later sentence begin during the immediate term of community
7 (~~(supervision)~~) custody and continue throughout the duration of the
8 consecutive term of community (~~(supervision)~~) custody.

9 (3) Subject to subsections (1) and (2) of this section, whenever
10 a person is sentenced for a felony that was committed while the
11 person was not under sentence for conviction of a felony, the
12 sentence shall run concurrently with any felony sentence which has
13 been imposed by any court in this or another state or by a federal
14 court subsequent to the commission of the crime being sentenced
15 unless the court pronouncing the current sentence expressly orders
16 that (~~they~~) the confinement terms be served consecutively to each
17 other. Unless the court expressly orders that the community custody
18 terms run consecutively, such terms run concurrently to each other
19 even if the court orders the confinement terms to run consecutively
20 to each other.

21 (4) Whenever any person granted probation under RCW 9.95.210 or
22 9.92.060, or both, has the probationary sentence revoked and a prison
23 sentence imposed, that sentence shall run consecutively to any
24 sentence imposed pursuant to this chapter, unless the court
25 pronouncing the subsequent sentence expressly orders that they be
26 served concurrently.

27 (5) (~~(In the case of consecutive sentences,)~~) All periods of
28 total confinement shall be served before any partial confinement,
29 community (~~(restitution, community supervision)~~) custody, or any
30 other requirement or conditions of any of the sentences. (~~Except for~~
31 exceptional sentences as authorized under RCW 9.94A.535, if two or
32 more sentences that run consecutively include periods of community
33 supervision, the aggregate of the community supervision period shall
34 not exceed twenty four months.))

35 **Sec. 2.** RCW 9.94B.050 and 2003 c 379 s 4 are each amended to
36 read as follows:

37 When a court sentences an offender to a term of total confinement
38 in the custody of the department for any of the offenses specified in
39 this section, the court shall also sentence the offender to a term of

1 community placement as provided in this section. Except as provided
2 in RCW 9.94A.501, the department shall supervise any sentence of
3 community placement imposed under this section.

4 (1) The court shall order a one-year term of community placement
5 for the following:

6 (a) A sex offense or a serious violent offense committed after
7 July 1, 1988, but before July 1, 1990; or

8 (b) An offense committed on or after July 1, 1988, but before
9 July 25, 1999, that is:

10 (i) Assault in the second degree;

11 (ii) Assault of a child in the second degree;

12 (iii) A crime against persons where it is determined in
13 accordance with RCW (~~9.94A.602~~) 9.94A.825 that the offender or an
14 accomplice was armed with a deadly weapon at the time of commission;
15 or

16 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
17 sentenced under RCW 9.94A.660.

18 (2) The court shall sentence the offender to a term of community
19 placement of two years or up to the period of earned release awarded
20 pursuant to RCW 9.94A.728, whichever is longer, for:

21 (a) An offense categorized as a sex offense committed on or after
22 July 1, 1990, but before June 6, 1996, including those sex offenses
23 also included in other offense categories;

24 (b) A serious violent offense other than a sex offense committed
25 on or after July 1, 1990, but before July 1, 2000; or

26 (c) A vehicular homicide or vehicular assault committed on or
27 after July 1, 1990, but before July 1, 2000.

28 (3) The community placement ordered under this section shall
29 begin either upon completion of the term of confinement or at such
30 time as the offender is transferred to community custody in lieu of
31 earned release. When the court sentences an offender to the statutory
32 maximum sentence then the community placement portion of the sentence
33 shall consist entirely of the community custody to which the offender
34 may become eligible. Any period of community custody actually served
35 shall be credited against the community placement portion of the
36 sentence. The community placement shall run concurrently to any
37 period of probation, parole, community supervision, community
38 placement, or community custody previously imposed by any court in
39 any jurisdiction, unless the court pronouncing the current sentence
40 expressly orders that they be served consecutively to each other.

1 (4) Unless a condition is waived by the court, the terms of any
2 community placement imposed under this section shall include the
3 following conditions:

4 (a) The offender shall report to and be available for contact
5 with the assigned community corrections officer as directed;

6 (b) The offender shall work at department-approved education,
7 employment, or community restitution, or any combination thereof;

8 (c) The offender shall not possess or consume controlled
9 substances except pursuant to lawfully issued prescriptions;

10 (d) The offender shall pay supervision fees as determined by the
11 department; and

12 (e) The residence location and living arrangements shall be
13 subject to the prior approval of the department during the period of
14 community placement.

15 (5) As a part of any terms of community placement imposed under
16 this section, the court may also order one or more of the following
17 special conditions:

18 (a) The offender shall remain within, or outside of, a specified
19 geographical boundary;

20 (b) The offender shall not have direct or indirect contact with
21 the victim of the crime or a specified class of individuals;

22 (c) The offender shall participate in crime-related treatment or
23 counseling services;

24 (d) The offender shall not consume alcohol; or

25 (e) The offender shall comply with any crime-related
26 prohibitions.

27 (6) An offender convicted of a felony sex offense against a minor
28 victim after June 6, 1996, shall comply with any terms and conditions
29 of community placement imposed by the department relating to contact
30 between the sex offender and a minor victim or a child of similar age
31 or circumstance as a previous victim.

32 (7) Prior to or during community placement, upon recommendation
33 of the department, the sentencing court may remove or modify any
34 conditions of community placement so as not to be more restrictive.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94B
36 RCW to read as follows:

37 Except for exceptional sentences, as authorized under RCW
38 9.94A.535, if two or more sentences that run consecutively include
39 periods of community supervision that the court has expressly ordered

1 to run consecutively, the aggregate of the community supervision
2 period shall not exceed twenty-four months.

3 NEW SECTION. **Sec. 4.** The department of corrections must
4 recalculate the scheduled end dates for terms of community custody,
5 community supervision, and community placement so that they run
6 concurrently to previously imposed sentences of community custody,
7 community supervision, community placement, probation, and parole,
8 unless the court pronouncing the current sentence has expressly
9 required such terms to run consecutively. This section applies to
10 each offender currently in confinement or under active supervision,
11 regardless of whether the offender is sentenced after the effective
12 date of this section, and regardless of whether the offender's date
13 of offense occurred before the effective date of this section or
14 after.

15 NEW SECTION. **Sec. 5.** The legislature declares that the
16 department of corrections' recalculations of community custody terms
17 pursuant to this act do not create any expectations that a particular
18 community custody term will end before July 1, 2018, and offenders
19 have no reason to conclude that the recalculation of their community
20 custody terms before July 1, 2018, is an entitlement or creates any
21 liberty interest in their community custody term ending before July
22 1, 2018.

23 NEW SECTION. **Sec. 6.** The department of corrections has the
24 authority to begin implementing this act upon the effective date of
25 this section.

26 NEW SECTION. **Sec. 7.** This act applies retroactively and
27 prospectively regardless of the date of an offender's underlying
28 offense.

29 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2018.

--- END ---

1 Unlawful Fish and Shellfish Catch
2 Accounting (RCW 77.15.630(3)(b))
3 Unlawful Issuance of Checks or Drafts
4 (RCW 9A.56.060)
5 Unlawful Possession of Fictitious
6 Identification (RCW 9A.56.320)
7 Unlawful Possession of Instruments of
8 Financial Fraud (RCW 9A.56.320)
9 Unlawful Possession of Payment
10 Instruments (RCW 9A.56.320)
11 Unlawful Possession of a Personal
12 Identification Device (RCW
13 9A.56.320)
14 Unlawful Production of Payment
15 Instruments (RCW 9A.56.320)
16 Unlawful Releasing, Planting,
17 Possessing, or Placing Deleterious
18 Exotic Wildlife (RCW
19 77.15.250(2)(b))
20 Unlawful Trafficking in Food Stamps
21 (RCW 9.91.142)
22 Unlawful Use of Food Stamps (RCW
23 9.91.144)
24 Unlawful Use of Net to Take Fish 1
25 (RCW 77.15.580(3)(b))
26 Unlawful Use of Prohibited Aquatic
27 Animal Species (RCW
28 77.15.253(3))
29 Vehicle Prowl 1 (RCW 9A.52.095)
30 Violating Commercial Fishing Area or
31 Time 1 (RCW 77.15.550(3)(b))

32 **PART II**
33 **COMMUNITY CUSTODY: CONCURRENT**

34 **Sec. 201.** RCW 9.94A.589 and 2015 2nd sp.s. c 3 s 13 are each
35 amended to read as follows:

1 (1)(a) Except as provided in (b), (c), or (d) of this subsection,
2 whenever a person is to be sentenced for two or more current
3 offenses, the sentence range for each current offense shall be
4 determined by using all other current and prior convictions as if
5 they were prior convictions for the purpose of the offender score:
6 PROVIDED, That if the court enters a finding that some or all of the
7 current offenses encompass the same criminal conduct then those
8 current offenses shall be counted as one crime. Sentences imposed
9 under this subsection shall be served concurrently. Consecutive
10 sentences may only be imposed under the exceptional sentence
11 provisions of RCW 9.94A.535. "Same criminal conduct," as used in this
12 subsection, means two or more crimes that require the same criminal
13 intent, are committed at the same time and place, and involve the
14 same victim. This definition applies in cases involving vehicular
15 assault or vehicular homicide even if the victims occupied the same
16 vehicle.

17 (b) Whenever a person is convicted of two or more serious violent
18 offenses arising from separate and distinct criminal conduct, the
19 standard sentence range for the offense with the highest seriousness
20 level under RCW 9.94A.515 shall be determined using the offender's
21 prior convictions and other current convictions that are not serious
22 violent offenses in the offender score and the standard sentence
23 range for other serious violent offenses shall be determined by using
24 an offender score of zero. The standard sentence range for any
25 offenses that are not serious violent offenses shall be determined
26 according to (a) of this subsection. All sentences imposed under this
27 subsection (1)(b) shall be served consecutively to each other and
28 concurrently with sentences imposed under (a) of this subsection.
29 However, unless the court expressly orders that the community custody
30 terms run consecutively to each other, such terms shall run
31 concurrently to each other even if the court orders the confinement
32 terms to run consecutively to each other.

33 (c) If an offender is convicted under RCW 9.41.040 for unlawful
34 possession of a firearm in the first or second degree and for the
35 felony crimes of theft of a firearm or possession of a stolen
36 firearm, or both, the standard sentence range for each of these
37 current offenses shall be determined by using all other current and
38 prior convictions, except other current convictions for the felony
39 crimes listed in this subsection (1)(c), as if they were prior
40 convictions. The offender shall serve consecutive sentences for each

1 conviction of the felony crimes listed in this subsection (1)(c), and
2 for each firearm unlawfully possessed.

3 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),
4 or 46.61.5055(4) shall be served consecutively to any sentences
5 imposed under RCW 46.20.740 and 46.20.750.

6 (2)(a) (~~Except as provided in (b) of this subsection,~~) Whenever
7 a person while under sentence for conviction of a felony commits
8 another felony and is sentenced to another term of confinement, the
9 latter term of confinement shall not begin until expiration of all
10 prior terms of confinement. However, any terms of community custody
11 shall run concurrently to each other, unless the court pronouncing
12 the current sentence expressly orders that they be served
13 consecutively.

14 (b) Whenever a second or later felony conviction results in
15 consecutive community ((supervision)) custody with conditions not
16 currently in effect, under the prior sentence or sentences of
17 community ((supervision)) custody the court may require that the
18 conditions of community ((supervision)) custody contained in the
19 second or later sentence begin during the immediate term of community
20 ((supervision)) custody and continue throughout the duration of the
21 consecutive term of community ((supervision)) custody.

22 (3) Subject to subsections (1) and (2) of this section, whenever
23 a person is sentenced for a felony that was committed while the
24 person was not under sentence for conviction of a felony, the
25 sentence shall run concurrently with any felony sentence which has
26 been imposed by any court in this or another state or by a federal
27 court subsequent to the commission of the crime being sentenced
28 unless the court pronouncing the current sentence expressly orders
29 that ~~((they))~~ the confinement terms be served consecutively to each
30 other. Unless the court expressly orders that the community custody
31 terms run consecutively, such terms run concurrently to each other
32 even if the court orders the confinement terms to run consecutively
33 to each other.

34 (4) Whenever any person granted probation under RCW 9.95.210 or
35 9.92.060, or both, has the probationary sentence revoked and a prison
36 sentence imposed, that sentence shall run consecutively to any
37 sentence imposed pursuant to this chapter, unless the court
38 pronouncing the subsequent sentence expressly orders that they be
39 served concurrently.

1 (5) (~~In the case of consecutive sentences,~~) All periods of
2 total confinement shall be served before any partial confinement,
3 community (~~restitution, community supervision~~) custody, or any
4 other requirement or conditions of any of the sentences. (~~Except for~~
5 ~~exceptional sentences as authorized under RCW 9.94A.535, if two or~~
6 ~~more sentences that run consecutively include periods of community~~
7 ~~supervision, the aggregate of the community supervision period shall~~
8 ~~not exceed twenty four months.~~)

9 **Sec. 202.** RCW 9.94B.050 and 2003 c 379 s 4 are each amended to
10 read as follows:

11 When a court sentences an offender to a term of total confinement
12 in the custody of the department for any of the offenses specified in
13 this section, the court shall also sentence the offender to a term of
14 community placement as provided in this section. Except as provided
15 in RCW 9.94A.501, the department shall supervise any sentence of
16 community placement imposed under this section.

17 (1) The court shall order a one-year term of community placement
18 for the following:

19 (a) A sex offense or a serious violent offense committed after
20 July 1, 1988, but before July 1, 1990; or

21 (b) An offense committed on or after July 1, 1988, but before
22 July 25, 1999, that is:

23 (i) Assault in the second degree;

24 (ii) Assault of a child in the second degree;

25 (iii) A crime against persons where it is determined in
26 accordance with RCW (~~9.94A.602~~) 9.94A.825 that the offender or an
27 accomplice was armed with a deadly weapon at the time of commission;
28 or

29 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
30 sentenced under RCW 9.94A.660.

31 (2) The court shall sentence the offender to a term of community
32 placement of two years or up to the period of earned release awarded
33 pursuant to RCW 9.94A.728, whichever is longer, for:

34 (a) An offense categorized as a sex offense committed on or after
35 July 1, 1990, but before June 6, 1996, including those sex offenses
36 also included in other offense categories;

37 (b) A serious violent offense other than a sex offense committed
38 on or after July 1, 1990, but before July 1, 2000; or

1 (c) A vehicular homicide or vehicular assault committed on or
2 after July 1, 1990, but before July 1, 2000.

3 (3) The community placement ordered under this section shall
4 begin either upon completion of the term of confinement or at such
5 time as the offender is transferred to community custody in lieu of
6 earned release. When the court sentences an offender to the statutory
7 maximum sentence then the community placement portion of the sentence
8 shall consist entirely of the community custody to which the offender
9 may become eligible. Any period of community custody actually served
10 shall be credited against the community placement portion of the
11 sentence. The community placement shall run concurrently to any
12 period of probation, parole, community supervision, community
13 placement, or community custody previously imposed by any court in
14 any jurisdiction, unless the court pronouncing the current sentence
15 expressly orders that they be served consecutively to each other.

16 (4) Unless a condition is waived by the court, the terms of any
17 community placement imposed under this section shall include the
18 following conditions:

19 (a) The offender shall report to and be available for contact
20 with the assigned community corrections officer as directed;

21 (b) The offender shall work at department-approved education,
22 employment, or community restitution, or any combination thereof;

23 (c) The offender shall not possess or consume controlled
24 substances except pursuant to lawfully issued prescriptions;

25 (d) The offender shall pay supervision fees as determined by the
26 department; and

27 (e) The residence location and living arrangements shall be
28 subject to the prior approval of the department during the period of
29 community placement.

30 (5) As a part of any terms of community placement imposed under
31 this section, the court may also order one or more of the following
32 special conditions:

33 (a) The offender shall remain within, or outside of, a specified
34 geographical boundary;

35 (b) The offender shall not have direct or indirect contact with
36 the victim of the crime or a specified class of individuals;

37 (c) The offender shall participate in crime-related treatment or
38 counseling services;

39 (d) The offender shall not consume alcohol; or

1 (e) The offender shall comply with any crime-related
2 prohibitions.

3 (6) An offender convicted of a felony sex offense against a minor
4 victim after June 6, 1996, shall comply with any terms and conditions
5 of community placement imposed by the department relating to contact
6 between the sex offender and a minor victim or a child of similar age
7 or circumstance as a previous victim.

8 (7) Prior to or during community placement, upon recommendation
9 of the department, the sentencing court may remove or modify any
10 conditions of community placement so as not to be more restrictive.

11 NEW SECTION. **Sec. 203.** A new section is added to chapter 9.94B
12 RCW to read as follows:

13 Except for exceptional sentences as authorized under RCW
14 9.94A.535, if two or more sentences that run consecutively include
15 periods of community supervision that the court has expressly ordered
16 to run consecutively, the aggregate of the community supervision
17 period shall not exceed twenty-four months.

18 NEW SECTION. **Sec. 204.** The department of corrections must
19 recalculate the scheduled end dates for terms of community custody,
20 community supervision, and community placement so that they run
21 concurrently to previously imposed sentences of community custody,
22 community supervision, community placement, probation, and parole.
23 This section applies to each offender currently in confinement or
24 under active supervision, regardless of whether the offender is
25 sentenced after the effective date of this section, and regardless of
26 whether the offender's date of offense occurred prior to the
27 effective date of this section or after.

28 NEW SECTION. **Sec. 205.** The legislature declares that the
29 department of corrections' recalculations of community custody terms
30 pursuant to this act do not create any expectations that a particular
31 community custody term will end before July 1, 2017, and offenders
32 have no reason to conclude that the recalculation of their community
33 custody terms before July 1, 2017, is an entitlement or creates any
34 liberty interest in their community custody term ending before July
35 1, 2017.

SENATE BILL 6509

State of Washington

65th Legislature

2018 Regular Session

By Senators Braun and Pedersen

1 AN ACT Relating to correctional cost savings; amending RCW
2 9.94A.589 and 9.94B.050; amending 2013 2nd sp.s. c 14 s 10
3 (uncodified); adding a new section to chapter 9.94B RCW; creating new
4 sections; repealing 2015 c 291 s 9; repealing 2015 c 291 ss 15 and 16
5 (uncodified); prescribing penalties; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 9.94A.589 and 2015 2nd sp.s. c 3 s 13 are each
8 amended to read as follows:

9 (1)(a) Except as provided in (b), (c), or (d) of this subsection,
10 whenever a person is to be sentenced for two or more current
11 offenses, the sentence range for each current offense shall be
12 determined by using all other current and prior convictions as if
13 they were prior convictions for the purpose of the offender score:
14 PROVIDED, That if the court enters a finding that some or all of the
15 current offenses encompass the same criminal conduct then those
16 current offenses shall be counted as one crime. Sentences imposed
17 under this subsection shall be served concurrently. Consecutive
18 sentences may only be imposed under the exceptional sentence
19 provisions of RCW 9.94A.535. "Same criminal conduct," as used in this
20 subsection, means two or more crimes that require the same criminal
21 intent, are committed at the same time and place, and involve the

1 same victim. This definition applies in cases involving vehicular
2 assault or vehicular homicide even if the victims occupied the same
3 vehicle.

4 (b) Whenever a person is convicted of two or more serious violent
5 offenses arising from separate and distinct criminal conduct, the
6 standard sentence range for the offense with the highest seriousness
7 level under RCW 9.94A.515 shall be determined using the offender's
8 prior convictions and other current convictions that are not serious
9 violent offenses in the offender score and the standard sentence
10 range for other serious violent offenses shall be determined by using
11 an offender score of zero. The standard sentence range for any
12 offenses that are not serious violent offenses shall be determined
13 according to (a) of this subsection. All sentences imposed under this
14 subsection (1)(b) shall be served consecutively to each other and
15 concurrently with sentences imposed under (a) of this subsection.
16 However, unless the court expressly orders that the community custody
17 terms run consecutively to each other, such terms shall run
18 concurrently to each other even if the court orders the confinement
19 terms to run consecutively to each other.

20 (c) If an offender is convicted under RCW 9.41.040 for unlawful
21 possession of a firearm in the first or second degree and for the
22 felony crimes of theft of a firearm or possession of a stolen
23 firearm, or both, the standard sentence range for each of these
24 current offenses shall be determined by using all other current and
25 prior convictions, except other current convictions for the felony
26 crimes listed in this subsection (1)(c), as if they were prior
27 convictions. The offender shall serve consecutive sentences for each
28 conviction of the felony crimes listed in this subsection (1)(c), and
29 for each firearm unlawfully possessed.

30 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),
31 or 46.61.5055(4) shall be served consecutively to any sentences
32 imposed under RCW 46.20.740 and 46.20.750.

33 (2)(a) (~~Except as provided in (b) of this subsection,~~) Whenever
34 a person while under sentence for conviction of a felony commits
35 another felony and is sentenced to another term of confinement, the
36 latter term of confinement shall not begin until expiration of all
37 prior terms of confinement. However, any terms of community custody
38 shall run concurrently to each other, unless the court pronouncing
39 the current sentence expressly orders that they be served
40 consecutively.

1 (b) Whenever a second or later felony conviction results in
2 consecutive community (~~(supervision)~~) custody with conditions not
3 currently in effect, under the prior sentence or sentences of
4 community (~~(supervision)~~) custody the court may require that the
5 conditions of community (~~(supervision)~~) custody contained in the
6 second or later sentence begin during the immediate term of community
7 (~~(supervision)~~) custody and continue throughout the duration of the
8 consecutive term of community (~~(supervision)~~) custody.

9 (3) Subject to subsections (1) and (2) of this section, whenever
10 a person is sentenced for a felony that was committed while the
11 person was not under sentence for conviction of a felony, the
12 sentence shall run concurrently with any felony sentence which has
13 been imposed by any court in this or another state or by a federal
14 court subsequent to the commission of the crime being sentenced
15 unless the court pronouncing the current sentence expressly orders
16 that (~~they~~) the confinement terms be served consecutively to each
17 other. Unless the court expressly orders that the community custody
18 terms run consecutively, such terms run concurrently to each other
19 even if the court orders the confinement terms to run consecutively
20 to each other.

21 (4) Whenever any person granted probation under RCW 9.95.210 or
22 9.92.060, or both, has the probationary sentence revoked and a prison
23 sentence imposed, that sentence shall run consecutively to any
24 sentence imposed pursuant to this chapter, unless the court
25 pronouncing the subsequent sentence expressly orders that they be
26 served concurrently.

27 (5) (~~(In the case of consecutive sentences,)~~) All periods of
28 total confinement shall be served before any partial confinement,
29 community (~~(restitution, community supervision)~~) custody, or any
30 other requirement or conditions of any of the sentences. (~~Except for~~
31 exceptional sentences as authorized under RCW 9.94A.535, if two or
32 more sentences that run consecutively include periods of community
33 supervision, the aggregate of the community supervision period shall
34 not exceed twenty four months.))

35 **Sec. 2.** RCW 9.94B.050 and 2003 c 379 s 4 are each amended to
36 read as follows:

37 When a court sentences an offender to a term of total confinement
38 in the custody of the department for any of the offenses specified in
39 this section, the court shall also sentence the offender to a term of

1 community placement as provided in this section. Except as provided
2 in RCW 9.94A.501, the department shall supervise any sentence of
3 community placement imposed under this section.

4 (1) The court shall order a one-year term of community placement
5 for the following:

6 (a) A sex offense or a serious violent offense committed after
7 July 1, 1988, but before July 1, 1990; or

8 (b) An offense committed on or after July 1, 1988, but before
9 July 25, 1999, that is:

10 (i) Assault in the second degree;

11 (ii) Assault of a child in the second degree;

12 (iii) A crime against persons where it is determined in
13 accordance with RCW (~~9.94A.602~~) 9.94A.825 that the offender or an
14 accomplice was armed with a deadly weapon at the time of commission;
15 or

16 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
17 sentenced under RCW 9.94A.660.

18 (2) The court shall sentence the offender to a term of community
19 placement of two years or up to the period of earned release awarded
20 pursuant to RCW 9.94A.728, whichever is longer, for:

21 (a) An offense categorized as a sex offense committed on or after
22 July 1, 1990, but before June 6, 1996, including those sex offenses
23 also included in other offense categories;

24 (b) A serious violent offense other than a sex offense committed
25 on or after July 1, 1990, but before July 1, 2000; or

26 (c) A vehicular homicide or vehicular assault committed on or
27 after July 1, 1990, but before July 1, 2000.

28 (3) The community placement ordered under this section shall
29 begin either upon completion of the term of confinement or at such
30 time as the offender is transferred to community custody in lieu of
31 earned release. When the court sentences an offender to the statutory
32 maximum sentence then the community placement portion of the sentence
33 shall consist entirely of the community custody to which the offender
34 may become eligible. Any period of community custody actually served
35 shall be credited against the community placement portion of the
36 sentence. The community placement shall run concurrently to any
37 period of probation, parole, community supervision, community
38 placement, or community custody previously imposed by any court in
39 any jurisdiction, unless the court pronouncing the current sentence
40 expressly orders that they be served consecutively to each other.

1 (4) Unless a condition is waived by the court, the terms of any
2 community placement imposed under this section shall include the
3 following conditions:

4 (a) The offender shall report to and be available for contact
5 with the assigned community corrections officer as directed;

6 (b) The offender shall work at department-approved education,
7 employment, or community restitution, or any combination thereof;

8 (c) The offender shall not possess or consume controlled
9 substances except pursuant to lawfully issued prescriptions;

10 (d) The offender shall pay supervision fees as determined by the
11 department; and

12 (e) The residence location and living arrangements shall be
13 subject to the prior approval of the department during the period of
14 community placement.

15 (5) As a part of any terms of community placement imposed under
16 this section, the court may also order one or more of the following
17 special conditions:

18 (a) The offender shall remain within, or outside of, a specified
19 geographical boundary;

20 (b) The offender shall not have direct or indirect contact with
21 the victim of the crime or a specified class of individuals;

22 (c) The offender shall participate in crime-related treatment or
23 counseling services;

24 (d) The offender shall not consume alcohol; or

25 (e) The offender shall comply with any crime-related
26 prohibitions.

27 (6) An offender convicted of a felony sex offense against a minor
28 victim after June 6, 1996, shall comply with any terms and conditions
29 of community placement imposed by the department relating to contact
30 between the sex offender and a minor victim or a child of similar age
31 or circumstance as a previous victim.

32 (7) Prior to or during community placement, upon recommendation
33 of the department, the sentencing court may remove or modify any
34 conditions of community placement so as not to be more restrictive.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94B
36 RCW to read as follows:

37 Except for exceptional sentences as authorized under RCW
38 9.94A.535, if two or more sentences that run consecutively include
39 periods of community supervision that the court has expressly ordered

1 to run consecutively, the aggregate of the community supervision
2 period shall not exceed twenty-four months.

3 NEW SECTION. **Sec. 4.** The department of corrections must
4 recalculate the scheduled end dates for terms of community custody,
5 community supervision, and community placement so that they run
6 concurrently to previously imposed sentences of community custody,
7 community supervision, community placement, probation, and parole.
8 This section applies to each offender currently in confinement or
9 under active supervision, regardless of whether the offender is
10 sentenced after the effective date of this section, and regardless of
11 whether the offender's date of offense occurred prior to the
12 effective date of this section or after.

13 NEW SECTION. **Sec. 5.** The legislature declares that the
14 department of corrections' recalculations of community custody terms
15 pursuant to this act do not create any expectations that a particular
16 community custody term will end before July 1, 2018, and offenders
17 have no reason to conclude that the recalculation of their community
18 custody terms before July 1, 2018, is an entitlement or creates any
19 liberty interest in their community custody term ending before July
20 1, 2018.

21 NEW SECTION. **Sec. 6.** The department of corrections has the
22 authority to begin implementing sections 1 through 4 of this act upon
23 the effective date of this section.

24 **Sec. 7.** 2013 2nd sp.s. c 14 s 10 (uncodified) is amended to read
25 as follows:

26 Section(~~s 1 and~~) 5 of this act expires July 1, 2018.

27 NEW SECTION. **Sec. 8.** The following acts or parts of acts are
28 each repealed:

- 29 (1) 2015 c 291 s 9;
30 (2) 2015 c 291 s 15 (uncodified); and
31 (3) 2015 c 291 s 16 (uncodified).

32 NEW SECTION. **Sec. 9.** Sections 1 through 4 of this act apply
33 retroactively and prospectively regardless of the date of an
34 offender's underlying offense.

1 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect immediately.

--- END ---

SENATE BILL REPORT

SB 6509

As Reported by Senate Committee On:
Law & Justice, February 1, 2018

Title: An act relating to correctional cost savings.

Brief Description: Concerning correctional cost savings.

Sponsors: Senators Braun and Pedersen.

Brief History:

Committee Activity: Law & Justice: 1/30/18, 2/01/18 [DP, w/oRec].

Brief Summary of Bill

- Requires terms of community custody to run concurrently when an offender is serving consecutive terms of confinement for multiple sentences, unless a court specifically orders otherwise.
- Requires the Department of Corrections (DOC) to recalculate the community custody terms of certain currently incarcerated or supervised offenders.
- Removes the expiration date for the drug grid changes from the 2013-15 biennium that reduced the sentence range for certain offenses from 6 to 18 months to 6 to 12 months.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille and Frockt.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Angel, Assistant Ranking Member; Wilson.

Staff: Shani Bauer (786-7468)

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.

Background: Concurrent Community Custody. Current law addresses whether the court may enter sentences for multiple crimes to be served consecutively or concurrently. Sentences for multiple crimes are required to run concurrently except in certain circumstances. Generally, those circumstances are:

- sentences where the court has determined that circumstances apply to justify an exceptional sentence;
- sentences for two or more serious violent offenses;
- sentences for certain crimes involving the unlawful possession of a firearm; and
- a sentence for a crime committed while the person was serving a sentence for another crime.

The statute is not clear on whether terms of community custody run concurrent or consecutive in these circumstances. DOC currently assumes that the term of community custody runs consistent with the term of confinement.

Sentencing for Drug Offenses. The Legislature adopted a separate sentencing grid that applies to drug offenses in 2003. Drug offenses committed on or after July 1, 2003, are divided into three seriousness levels. Offenders sentenced for Seriousness Level 1 drug offenses have a current offense of one of the following:

- possession or forged prescription of a controlled substance, legend drug, or marijuana;
- manufacturing, delivering, or possession with intent to deliver marijuana; or
- using a building for drug purposes.

Prior to 2013, the court had the discretion to impose a sentence of between 6 to 18 months for offenders with a criminal history of three to five prior felony offenses. As a result, the court could sentence the offender to either jail or prison depending on the length of the sentence. The drug sentencing grid was modified in 2013, so that any offender who commits a Seriousness Level 1 drug offense, and has a criminal history score within the range of three to five, will serve their sentence in jail unless an exceptional sentence is imposed. That change is set to expire July 1, 2018.

Summary of Bill: Concurrent Community Custody. Terms of community custody run concurrently when an offender is serving consecutive terms of confinement on multiple sentences, unless a court specifically orders otherwise. For all offenders currently in confinement or under active supervision, DOC must recalculate the scheduled end dates for terms of community custody, community supervision, and community placement so that they run concurrently to previously imposed sentences. The recalculations do not create any expectation that a term will end before July 1, 2018.

This bill applies retroactively and prospectively regardless of the date of an offender's underlying offense.

Sentencing for Drug Offenses. The expiration date is removed for the drug grid changes from the 2013-15 biennium that reduced the sentence range for certain offenses from 6 to 18 months to 6 to 12 months.

Appropriation: None.

Fiscal Note: Requested on January 26, 2018.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: Eighty-eight percent of orders are silent as to whether community custody should run consecutively or concurrently. The proposed changes will clarify this issue and simplify entry of orders for records staff. Additionally, it will give further direction on how to enforce conditions and accountability when law violations occur. The drug sunset addresses the one cell in the drug grid that historically straddles jail and prison and replaces it with a presumptive jail sentence. Washington has made a conscious decision to preserve prison beds for serious and violent crimes. Only 7 percent of those currently incarcerated in prison are there for drug crimes. DOC is currently over capacity and the caseload forecast council continues to project capacity to go up. This bill addresses low level drug offenders that are better served in jail than prison. DOC is continuing to work with AOC on the judgement and sentence form. The form will have clear checkboxes for a judge to be able to order whether a sentence runs concurrent or consecutive.

CON: Supervision is effective to help a person reintegrate back into the community and reduce victimization in the community. We are not aware of any validated study as to diminishing returns by shortening periods of supervision. The presumption that community custody sentences are concurrent and then allowing judges to order consecutive terms is set up to fail. There is no budget certainty in the future due to judges' discretion. Offenders should be under supervision as long as possible to try to prevent new crimes and to get them to pay their restitution. The drug offender sentencing grid just feels like the state is pushing obligations down to the counties and jails. Counties do not have the ability to keep absorbing those costs. This change was temporarily put into place when the state was in a budget crisis. There was no anticipation that it be permanent at the time.

Persons Testifying: PRO: Dianne Ashlock, Records Director, Department of Corrections; Alex MacBain, Executive Policy Director, Department of Corrections.

CON: James McMahan, Washington Association Sheriffs and Police Chiefs; Michael Brunson, citizen.

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

1 AN ACT Relating to community custody;

2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4

5 **Sec. 1.** RCW 9.94A.589 and 2015 2nd sp.s. c 3 s 13 are each
6 amended to read as follows:

7 (1)(a) Except as provided in (b), (c), or (d) of this
8 subsection, whenever a person is to be sentenced for two or more
9 current offenses, the sentence range for each current offense shall
10 be determined by using all other current and prior convictions as if
11 they were prior convictions for the purpose of the offender score:
12 PROVIDED, That if the court enters a finding that some or all of the
13 current offenses encompass the same criminal conduct then those
14 current offenses shall be counted as one crime. Sentences imposed
15 under this subsection shall be served concurrently. Consecutive
16 sentences may only be imposed under the exceptional sentence
17 provisions of RCW 9.94A.535. "Same criminal conduct," as used in
18 this subsection, means two or more crimes that require the same
19 criminal intent, are committed at the same time and place, and

1 involve the same victim. This definition applies in cases involving
2 vehicular assault or vehicular homicide even if the victims occupied
3 the same vehicle.

4 (b) Whenever a person is convicted of two or more serious
5 violent offenses arising from separate and distinct criminal
6 conduct, the standard sentence range for the offense with the
7 highest seriousness level under RCW 9.94A.515 shall be determined
8 using the offender's prior convictions and other current convictions
9 that are not serious violent offenses in the offender score and the
10 standard sentence range for other serious violent offenses shall be
11 determined by using an offender score of zero. The standard sentence
12 range for any offenses that are not serious violent offenses shall
13 be determined according to (a) of this subsection. All sentences
14 imposed under this subsection (1)(b) shall be served consecutively
15 to each other and concurrently with sentences imposed under (a) of
16 this subsection. However, unless the court expressly orders that the
17 community custody terms run consecutively to each other, such terms
18 shall run concurrently to each other even if the court orders the
19 confinement terms to run consecutively to each other.

20 (c) If an offender is convicted under RCW 9.41.040 for unlawful
21 possession of a firearm in the first or second degree and for the
22 felony crimes of theft of a firearm or possession of a stolen
23 firearm, or both, the standard sentence range for each of these
24 current offenses shall be determined by using all other current and
25 prior convictions, except other current convictions for the felony
26 crimes listed in this subsection (1)(c), as if they were prior
27 convictions. The offender shall serve consecutive sentences for each
28 conviction of the felony crimes listed in this subsection (1)(c),
29 and for each firearm unlawfully possessed.

30 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),
31 or 46.61.5055(4) shall be served consecutively to any sentences
32 imposed under RCW 46.20.740 and 46.20.750.

33 (2)(a) (~~Except as provided in (b) of this subsection,~~)
34 Whenever a person while under sentence for conviction of a felony

1 commits another felony and is sentenced to another term of
2 confinement, the latter term of confinement shall not begin until
3 expiration of all prior terms of confinement. However, any terms of
4 community custody shall run concurrently to each other, unless the
5 court pronouncing the current sentence expressly orders that they be
6 served consecutively.

7 (b) Whenever a second or later felony conviction results in
8 consecutive community ((~~supervision~~)) custody with conditions not
9 currently in effect, under the prior sentence or sentences of
10 community ((~~supervision~~)) custody the court may require that the
11 conditions of community ((~~supervision~~)) custody contained in the
12 second or later sentence begin during the immediate term of
13 community ((~~supervision~~)) custody and continue throughout the
14 duration of the consecutive term of community ((~~supervision~~))
15 custody.

16 (3) Subject to subsections (1) and (2) of this section, whenever
17 a person is sentenced for a felony that was committed while the
18 person was not under sentence for conviction of a felony, the
19 sentence shall run concurrently with any felony sentence which has
20 been imposed by any court in this or another state or by a federal
21 court subsequent to the commission of the crime being sentenced
22 unless the court pronouncing the current sentence expressly orders
23 that ((~~they~~)) the confinement terms be served consecutively to each
24 other. Unless the court expressly orders that the community custody
25 terms run consecutively, such terms run concurrently to each other
26 even if the court orders the confinement terms to run consecutively
27 to each other.

28 (4) Whenever any person granted probation under RCW 9.95.210 or
29 9.92.060, or both, has the probationary sentence revoked and a
30 prison sentence imposed, that sentence shall run consecutively to
31 any sentence imposed pursuant to this chapter, unless the court
32 pronouncing the subsequent sentence expressly orders that they be
33 served concurrently.

34

1 (5) (~~In the case of consecutive sentences,~~) All periods of
2 total confinement shall be served before any partial confinement,
3 community (~~restitution, community supervision~~) custody, or any
4 other requirement or conditions of any of the sentences. (~~Except~~
5 ~~for exceptional sentences as authorized under RCW 9.94A.535, if two~~
6 ~~or more sentences that run consecutively include periods of~~
7 ~~community supervision, the aggregate of the community supervision~~
8 ~~period shall not exceed twenty four months.~~)

9

10 **Sec. 2.** RCW 9.94B.050 and 2003 c 379 s 4 are each amended to
11 read as follows:

12 When a court sentences an offender to a term of total
13 confinement in the custody of the department for any of the offenses
14 specified in this section, the court shall also sentence the
15 offender to a term of community placement as provided in this
16 section. Except as provided in RCW 9.94A.501, the department shall
17 supervise any sentence of community placement imposed under this
18 section.

19 (1) The court shall order a one-year term of community placement
20 for the following:

21 (a) A sex offense or a serious violent offense committed after
22 July 1, 1988, but before July 1, 1990; or

23 (b) An offense committed on or after July 1, 1988, but before
24 July 25, 1999, that is:

25 (i) Assault in the second degree;

26 (ii) Assault of a child in the second degree;

27 (iii) A crime against persons where it is determined in
28 accordance with RCW (~~9.94A.602~~) 9.94A.825 that the offender or an
29 accomplice was armed with a deadly weapon at the time of commission;
30 or

31 (iv) A felony offense under chapter 69.50 or 69.52 RCW not
32 sentenced under RCW 9.94A.660.

33

34

1 (2) The court shall sentence the offender to a term of community
2 placement of two years or up to the period of earned release awarded
3 pursuant to RCW 9.94A.728, whichever is longer, for:

4 (a) An offense categorized as a sex offense committed on or
5 after July 1, 1990, but before June 6, 1996, including those sex
6 offenses also included in other offense categories;

7 (b) A serious violent offense other than a sex offense committed
8 on or after July 1, 1990, but before July 1, 2000; or

9 (c) A vehicular homicide or vehicular assault committed on or
10 after July 1, 1990, but before July 1, 2000.

11 (3) The community placement ordered under this section shall
12 begin either upon completion of the term of confinement or at such
13 time as the offender is transferred to community custody in lieu of
14 earned release. When the court sentences an offender to the
15 statutory maximum sentence then the community placement portion of
16 the sentence shall consist entirely of the community custody to
17 which the offender may become eligible. Any period of community
18 custody actually served shall be credited against the community
19 placement portion of the sentence. The community placement shall run
20 concurrently to any period of probation, parole, community
21 supervision, community placement, or community custody previously
22 imposed by any court in any jurisdiction, unless the court
23 pronouncing the current sentence expressly orders that they be
24 served consecutively to each other.

25 (4) Unless a condition is waived by the court, the terms of any
26 community placement imposed under this section shall include the
27 following conditions:

28 (a) The offender shall report to and be available for contact
29 with the assigned community corrections officer as directed;

30 (b) The offender shall work at department-approved education,
31 employment, or community restitution, or any combination thereof;

32 (c) The offender shall not possess or consume controlled
33 substances except pursuant to lawfully issued prescriptions;

34

1 (d) The offender shall pay supervision fees as determined by the
2 department; and

3 (e) The residence location and living arrangements shall be
4 subject to the prior approval of the department during the period of
5 community placement.

6 (5) As a part of any terms of community placement imposed under
7 this section, the court may also order one or more of the following
8 special conditions:

9 (a) The offender shall remain within, or outside of, a specified
10 geographical boundary;

11 (b) The offender shall not have direct or indirect contact with
12 the victim of the crime or a specified class of individuals;

13 (c) The offender shall participate in crime-related treatment or
14 counseling services;

15 (d) The offender shall not consume alcohol; or

16 (e) The offender shall comply with any crime-related
17 prohibitions.

18 (6) An offender convicted of a felony sex offense against a
19 minor victim after June 6, 1996, shall comply with any terms and
20 conditions of community placement imposed by the department relating
21 to contact between the sex offender and a minor victim or a child of
22 similar age or circumstance as a previous victim.

23 (7) Prior to or during community placement, upon recommendation
24 of the department, the sentencing court may remove or modify any
25 conditions of community placement so as not to be more restrictive.

26

27 NEW SECTION. **Sec. 3.** The department of corrections must
28 recalculate the scheduled end dates for terms of community custody,
29 community supervision, and community placement so that they run
30 concurrently to previously imposed sentences of community custody,
31 community supervision, community placement, probation, and parole,
32 unless the court pronouncing the current sentence has expressly
33 required such terms to run consecutively. This section applies to
34 each offender currently in confinement or under active supervision,

1 regardless of whether the offender is sentenced after the effective
2 date of this section, and regardless of whether the offender's date
3 of offense occurred prior to the effective date of this section or
4 after.

5
6 NEW SECTION. **Sec. 4.** The legislature declares that the
7 department of corrections' recalculations of community custody terms
8 pursuant to this act do not create any expectations that a
9 particular community custody term will end before July 1, 2020, and
10 offenders have no reason to conclude that the recalculation of their
11 community custody terms before July 1, 2020, is an entitlement or
12 creates any liberty interest in their community custody term ending
13 before July 1, 2020.

14
15 NEW SECTION. **Sec. 5.** The department of corrections has the
16 authority to begin implementing this act upon the effective date of
17 this section.

18
19 NEW SECTION. **Sec. 6.** This act applies retroactively and
20 prospectively regardless of the date of an offender's underlying
21 offense.

--- END ---

SENATE BILL REPORT

SB 5848

As Reported by Senate Committee On:
Human Services, Reentry & Rehabilitation, February 20, 2019
Ways & Means, February 27, 2019

Title: An act relating to individuals under the department of corrections' jurisdiction.

Brief Description: Concerning individuals under the department of corrections' jurisdiction.

Sponsors: Senators Darneille and Nguyen; by request of Department of Corrections.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 2/14/19, 2/20/19 [DPS-WM, w/oRec].

Ways & Means: 2/27/19 [w/oRec, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Requires multiple terms of community custody run concurrent, unless the courts expressly order terms be served consecutively, regardless of how the term of confinement is ordered.
- Allows sanctions for low-level violations to be non-confinement sanctions when appropriate, or not more than three days in custody.
- Removes requirements for 30 days of sanction time for underlying 21 designation cases.
- Changes the allowable amount of earned time on a sentence from a maximum of 33 percent to a maximum of 50 percent, if the offense was not classified as a violent, sex, or crime against a person offense.
- Adds an entitlement to a resentencing hearing for offenders who were sentenced for a drug offense committed prior to July 1, 2004, and are currently serving a term of incarceration for that drug offense.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 5848 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Cleveland, Wilson, C. and Zeiger.

Minority Report: That it be referred without recommendation.

Signed by Senators Walsh, Ranking Member; O'Ban.

Staff: Keri Waterland (786-7490)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Lias, Palumbo, Pedersen, Rivers and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Wagoner, Warnick and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator Schoesler.

Staff: Travis Sugarman (786-7446)

Background: Concurrent and Consecutive Sentences. Under the Sentencing Reform Act (SRA), judges determine sentences for felony offenses by selecting a determinate sentence from a range provided in statute. Ranges are determined by reference to a sentencing grid, which is based on the defendant's offender score and the seriousness level classification of the offense. When an offender is convicted for multiple offenses in the same case, the court imposes separate sentences, including terms of confinement, for each offense. In this context, the SRA generally requires the sentences to run concurrently, which means the offender serves both sentences simultaneously, with the longest period of confinement impacting the potential release date. The presence of multiple offenses affects the offender score, which then lengthens the base sentences for both offenses. There are exceptions to the requirement for concurrent sentences in exceptional circumstances. For example, sentences must run consecutively if the offender committed two or more serious violent offenses arising from separate and distinct criminal conduct. In the case of consecutive sentences, all periods of total confinement must be served before any periods of partial confinement, including community custody. If two or more sentences running consecutively include periods of community custody, the aggregate of the community custody period shall not exceed 24 months.

Conviction for a New Offense While Still Serving a Sentence. If an offender commits a new offense while still serving their sentence for a previous felony, including during a period of community custody, the term of confinement for the new offense does not commence until the expiration of the sentence for the prior offense, unless a judge imposes an exceptional sentence based on mitigating circumstances.

Conviction of Multiple Offenses in Different Jurisdictions. When an offender receives multiple convictions from different jurisdictions for offenses committed while the offender was not serving a sentence, the sentences run concurrently, unless the court ordering the subsequent sentence expressly orders they run consecutively.

Community Custody. Community custody is the portion of an offender's sentence served in the community under the supervision of the Department of Corrections (DOC). Courts are mandated to order community custody for offenders convicted of certain crimes. While on community custody, offenders are subject to a variety of conditions imposed by the court and DOC. DOC must assess the offender's risk to reoffend and may establish and modify the offender's conditions of community custody based on the offender's risk to community safety and conditions imposed by the court. DOC may issue warrants for the arrest of any offender who violates a condition of community custody. If an offender violates the conditions, the offender may be required to serve up to the remaining portion of their sentence in confinement.

Earned Release Time. Some offenders are eligible for earned early release for good behavior and good performance. The amount of the sentence eligible for earned early release varies depending on the circumstances of the offender's underlying offense and date of conviction. Earned early release is limited to 10 percent for class A felony sex offenses and serious violent offenses, and 33 percent for other offenses. Many sentences are currently not eligible for earned early release, including portions of sentences for mandatory firearm or deadly weapon enhancements.

Swift and Certain. DOC implemented the swift and certain (SAC) policy in May of 2012. SAC was established to reduce confinement time for sanctions following a violation of supervision conditions. While maintaining a substantial focus on public safety, the Washington SAC program sought to reduce correctional costs associated with short-term confinement for violation sanctioning.

Underlying 21 Designation. If the offender's underlying offense is one of the following felonies—known as the underlying 21 designation or U21—and the violation behavior constitutes a new misdemeanor, gross misdemeanor, or felony, the offender shall be held in total confinement pending a sanction hearing, and until the sanction expires—for up to 30 days—or until a prosecuting attorney files new charges against the offender, whichever occurs first:

- assault in the first degree;
- assault of a child in the first degree;
- assault of a child in the second degree;
- burglary in the first degree;
- child molestation in the first degree;
- commercial sexual abuse of a minor;
- dealing in depictions of a minor engaged in sexually explicit conduct;
- homicide by abuse;
- indecent liberties with forcible compulsion;
- indecent liberties with a person capable of consent;
- kidnapping in the first degree;

- murder in the first degree;
- murder in the second degree;
- promoting commercial sexual abuse of a minor;
- rape in the first degree;
- rape in the second degree;
- rape of a child in the first degree;
- rape of a child in the second degree;
- robbery in the first degree;
- sexual exploitation of a minor; or
- vehicular homicide while under the influence of intoxicating liquor or any drug.

Summary of Bill: The terms of community custody shall run concurrently to each other unless the court expressly orders community custody run consecutively. An individual who is currently in confinement and is subsequently sentenced for another felony shall serve their confinement terms consecutively. The terms of community custody shall run concurrently to each other unless the court expressly orders community custody run consecutively. The terms of community placement shall run concurrently to any period of probation, parole, community supervision, community placement or community custody, unless the court expressly orders the community placement run consecutively.

Individuals convicted on or after July 1, 2019, may not exceed 50 percent aggregate earned release time of the sentence, when the conviction is for an offense that is not classified as a sex offense, violent offense, or crime against a person.

DOC may sanction an offender who commits a low level violation by giving them one or more nonconfinement sanctions, or not more than three days in total confinement.

DOC's recalculations of community custody terms do not create any expectations a particular community custody term will end before July 1, 2019, and offenders have no reason to conclude the recalculation of their community custody terms before the effective date of this act is an entitlement or creates any liberty interest in their community custody term ending before July 1, 2019. DOC is authorized to take the time reasonably necessary to complete the recalculations of community custody terms after the effective date of this section.

DOC must apply this act retroactively and prospectively, regardless of an offender's underlying offense date.

The changes to the maximum percentages of earned release time do not create any expectation the percentage of earned release time cannot be revised, and offenders have no reason to conclude the maximum percentage of earned release time is an entitlement or creates any liberty interest. The Legislature retains full control over the right to revise the percentages of earned release time available to offenders at any time.

Individuals who were sentenced for a drug offense committed prior to July 1, 2004, and are currently serving a term of incarceration for that drug offense are entitled to a resentencing hearing. In no case may the resentencing under result in the offender serving a greater term of total confinement. The prosecuting attorney for the county in which any offender was sentenced must review the sentencing documents and shall, make a motion for relief from

sentence to the original sentencing court. The offender may make a motion for relief from sentence to the original sentencing court as well. The sentencing court shall grant the motion if it finds that the offender is serving a sentence for a drug offense committed prior to July 1, 2004, and shall immediately set an expedited date for resentencing.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):

- Adds an entitlement to a resentencing hearing for offenders who were sentenced for a drug offense committed prior to July 1, 2004, and are currently serving a term of incarceration for that drug offense.
- Adds processes for offenders, attorneys, and the sentencing court specific to motions for resentencing.
- Adds language that in no case may the resentencing under this order result in the offender serving a greater term of total confinement.
- The additional section expires on July 1, 2021.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2019.

Staff Summary of Public Testimony on Original Bill (Human Services, Reentry & Rehabilitation): *The committee recommended a different version of the bill than what was heard.* PRO: Assists DOC in addressing capacity issues, reduces complexity of multiple community supervision terms, and streamlines the violation process. DOC is currently at 103 percent and 109 percent capacity for male to female respectively, and we currently have 44 and 28 males and females sleeping on the floor respectively. This impacts safety and security. Changes are prospective only in this bill for the earned release time going to 50 percent. This will have a positive impact on capacity. Between 2003 and 2010 DOC had the authority to do 50 percent good time, and WSIPP concluded that this led to a return on investment of \$1.86 for every \$1.00 spent. There is unnecessary complexity for the staff, and this makes this streamlined. DOSA is an example of this complexity and streamlining; prior to a supervision term starting, DOC cannot sanction on if the person not serving the community custody sentence, so DOSA offenders cannot be sanctioned sometimes if they are not on supervisions because the sentence for community custody is consecutive. The initial period of transition is a high risk time and this is a better use of funds to focus on. Swift and certain changes in this bill improve the process of those who commit violations of community custody. Based on current law, counting rules apply regardless of the actual violation, and removing the count allows for sanctions to be tailored to the individual and be based on risk versus just confining someone. Research and presentations shows that the first 12 months of community supervision is the most critical and if support is given.

CON: We tend to see these bills when there is a budget deficit. The overcrowding is not unexpected. We do not see these changes as advantageous to public safety. The 50 percent

good time is a reduction to a felony sanction by half and we do not think this number is based on science, and do not support this. We are not aware of science where there is a definitive point where it is determined to not be cost effective to supervise. The legislative changes should be based on public safety, not on financial considerations. This legislation would result in the loss of approximately 70 FTE's, and the stated purpose of DOC could be achieved without this bill. This is not for public safety. If multiple terms will run concurrently, then what is the ability to deter criminal behavior if there is no consecutive community custody? This creates a staff safety concern. The bill is not evidence based and it undermines the principles of community custody.

Persons Testifying (Human Services, Reentry & Rehabilitation): PRO: Senator Jeannie Darneille, Prime Sponsor; Alex MacBain, Department of Corrections; Mac Pevey, Assistant Secretary Community Corrections Division, DOC; Keri-Anne Jetzer, Sentencing Guidelines Commission.

CON: Judy Kuschel, Washington Federation of State Employees; Paul Okerman, Washington Federation of State Employees; James McMahan, Washington Association Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation): No one.