

# **SUPERVISION COMPLIANCE CREDIT POSITIVE ACHIEVEMENT TIME**

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# Positive Achievement Time

November 2019



The Department of Corrections (DOC) is seeking changes that would allow most individuals on community supervision to earn time off of their community custody sentence. This would allow DOC the opportunity to expand its current swift and certain sanctioning model to include the application of incentives to further enhance offender compliance as well as reduce recidivism.

Research and evidence-based practice strongly support the use of both positive and negative re-enforcers to effectively change human behavior. The application of swift and certain sanctions in combination with swift and certain incentives during supervision, will support behavior change and reduce risk to reoffend. It should also be noted that behavior based incentives also provide for positive engagement on supervision and allow the case manager to recognize small milestones that continue individual engagement in the supervision process, thereby creating a path for successful supervision completion.

## Proposed Changes

The earned incentive days, referred to as Positive Achievement Time (PAT), may only be awarded to individuals who have clearly shown positive behavior for a continuous 30 day period through strict compliance with their case management plan. Earned PAT may be accrued over the course of the individual's supervision sentence. Additionally, accrued PAT may be taken away from the individual as a sanction for violation behavior. The result is that higher performing individuals will move off of supervision more quickly, thereby allowing DOC to focus limited resources on those individuals who need it the most.

Compliance with supervision plus completion of specific treatment, programming or reentry goals, will result in the granting of PAT. Each month, the CCO and supervised individual will determine the specific program/treatment participation or goal where the individual can earn PAT. These determinations will be made based upon the individual's specific risk, needs and responsivity factors. The CCO will provide coaching, mentoring, direction, guidance and resources that will support the individual's success. The individual will be responsible to participate in programming/treatment or complete the goal during the month. Participation in programming and treatment will be mandatory and imposed as a condition of supervision. Individual's failure to participate in programming or treatment will be considered non-compliance and may result in a violation process or loss of incentives.

*"Similar to how a sanction can act as stimuli to deter future unwanted behaviors, incentives ranging from verbal recognition to early discharge from supervision, can act as a stimuli to reinforce positive behavior. In fact, to be most effective, correctional interventions with individuals involved in the justice system should consist of positive reinforcements that outnumber sanctions or punishments. (Andrews & Bonta 2010; Gendreau, 1996; Lester, Braswell and Van Voorhis, 2004)"*

**Effective Responses to Offender Behavior: Lessons Learned for Probation and Parole Supervision: APPA/NCSC/Pew Charitable Trusts**

## Advantages to Positive Achievement Time

- ***Results in positive behavioral change.*** Provides the much needed “carrot” to our current Swift and Certain “stick-only” behavior management model by incentivizing positive behavior above the mere avoidance of bad behavior.
- ***Targets resources to the highest needs.*** Individuals demonstrating positive behavior will earn time off of supervision, allowing DOC to direct limited resources to individuals who need it most: those who are struggling to maintain compliance, have higher criminogenic needs, and remain at a high risk to reoffend (Risk Needs Responsivity principle).
- ***Provides an impactful alternative to arrest and confinement.*** Individuals can lose accrued PAT for violations. This sanction alternative can be used immediately at the point of violation, can be implemented statewide without the need for external resources, and will allow for the individual to maintain participation in programming and other prosocial activities.
- ***Focuses the individual on supervision to established reentry goals.*** The use of PAT or incentives of supervision allows the individual to establish goals that are attainable, measurable and meet their needs for successful reentry into the community. These goals are established at the beginning of supervision and create opportunities for engagement, and a coaching and mentoring model between the CCO and the individual, so that they can collaborate towards successful completion of supervision.

Individuals already receiving alternative sentences are not allowed positive time credits (DOSAs, SOSSAs, FTOWs, & FOSAs). Individuals supervised through the interstate compact are not allowed credits. Individuals under ISRB (pre-SRA and CCBs) do not get positive time credits.

### For more information:

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1 AN ACT Relating to community custody;

2

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

4 **Sec. 1.** RCW 9.94A.501 and 2016 sp.s. c 28 s 1 are each amended to  
5 read as follows:

6 (1) The department shall supervise the following offenders who  
7 are sentenced to probation in superior court, pursuant to RCW  
8 9.92.060, 9.95.204, or 9.95.210:

9 (a) Offenders convicted of:

10 (i) Sexual misconduct with a minor second degree;

11 (ii) Custodial sexual misconduct second degree;

12 (iii) Communication with a minor for immoral purposes; and

13 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

14 (b) Offenders who have:

15 (i) A current conviction for a repetitive domestic violence  
16 offense where domestic violence has been pleaded and proven after  
17 August 1, 2011; and

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1 (ii) A prior conviction for a repetitive domestic violence  
2 offense or domestic violence felony offense where domestic violence  
3 has been pleaded and proven after August 1, 2011.

4 (2) Misdemeanor and gross misdemeanor offenders supervised by  
5 the department pursuant to this section shall be placed on community  
6 custody.

7 (3) The department shall supervise every felony offender  
8 sentenced to community custody pursuant to RCW 9.94A.701 or  
9 9.94A.702 whose risk assessment classifies the offender as one who  
10 is at a high risk to reoffend.

11 (4) Notwithstanding any other provision of this section, the  
12 department shall supervise an offender sentenced to community  
13 custody regardless of risk classification if the offender:

14 (a) Has a current conviction for a sex offense or a serious  
15 violent offense and was sentenced to a term of community custody  
16 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

17 (b) Has been identified by the department as a dangerous  
18 mentally ill offender pursuant to RCW 72.09.370;

19 (c) Has an indeterminate sentence and is subject to parole  
20 pursuant to RCW 9.95.017;

21 (d) Has a current conviction for violating RCW 9A.44.132(1)  
22 (failure to register) and was sentenced to a term of community  
23 custody pursuant to RCW 9.94A.701;

24 (e)(i) Has a current conviction for a domestic violence felony  
25 offense where domestic violence has been pleaded and proven after  
26 August 1, 2011, and a prior conviction for a repetitive domestic  
27 violence offense or domestic violence felony offense where domestic  
28 violence was pleaded and proven after August 1, 2011. This  
29 subsection (4)(e)(i) applies only to offenses committed prior to  
30 July 24, 2015;

31 (ii) Has a current conviction for a domestic violence felony  
32 offense where domestic violence was pleaded and proven. The state  
33 and its officers, agents, and employees shall not be held criminally  
34 or civilly liable for its supervision of an offender under this

1 subsection (4)(e)(ii) unless the state and its officers, agents, and  
2 employees acted with gross negligence;

3 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or  
4 9.94A.670;

5 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

6 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular  
7 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)  
8 (felony DUI), or RCW 46.61.504(6) (felony physical control).

9 (5) The department shall supervise any offender who is released  
10 by the indeterminate sentence review board and who was sentenced to  
11 community custody or subject to community custody under the terms of  
12 release.

13 (6) The department is not authorized to, and may not, supervise  
14 any offender sentenced to a term of community custody or any  
15 probationer unless the offender or probationer is one for whom  
16 supervision is required under this section or RCW 9.94A.5011.

17 (7) The department shall conduct a risk assessment for every  
18 felony offender sentenced to a term of community custody who may be  
19 subject to supervision under this section or RCW 9.94A.5011.

20 (8) The period of time the department is authorized to supervise  
21 an offender under this section may not exceed the duration of  
22 community custody specified under RCW 9.94B.050, 9.94A.701 (1)  
23 through (8), or 9.94A.702, except in cases where the court has  
24 imposed an exceptional term of community custody under RCW  
25 9.94A.535.

26 (9) The period of time the department is authorized to supervise  
27 an offender under this section may be reduced by the earned award of  
28 supervision compliance credit pursuant to section 2 of this act.

29

30 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A  
31 RCW to read as follows:

32 (1) If an offender sentenced under this chapter or chapter 9.94B  
33 RCW is supervised by the department, the offender may earn

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1 supervision compliance credit in accordance with procedures that are  
2 developed and adopted by the department.

3 (a) The supervision compliance credit shall be awarded to  
4 offenders who are in compliance with supervision terms and are  
5 making progress towards the goals of their individualized  
6 supervision case plan, including: Participation in specific targeted  
7 interventions, risk-related programming or treatment; or completing  
8 steps towards specific targeted goals that enhance protective  
9 factors and stability, as determined by the department.

10 (b) For each month of community custody served, offenders may  
11 earn supervision compliance credit of fifteen days.

12 (c) Supervision compliance credit is accrued monthly and time  
13 shall not be applied to an offender's term of supervision prior to  
14 the earning of the time.

15 (2) An offender is not eligible to earn supervision compliance  
16 credit if he or she:

17 (a) Was sentenced under RCW 9.94A.507 or 10.95.030;

18 (b) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or  
19 9.94A.670;

20 (c) Is subject to supervision pursuant to RCW 9.94A.745;

21 (d) Has an indeterminate sentence and is subject to parole  
22 pursuant to RCW 9.95.017; or

23 (e) Is serving community custody pursuant to early release under  
24 RCW 9.94A.730.

25

26 NEW SECTION. **Sec. 3.** The department of corrections has  
27 discretion to implement sections 1 and 2 of this act over a period  
28 of time not to exceed twelve months. For any offender under active  
29 supervision by the department as of the effective date of this  
30 section, he or she is not eligible to earn supervision compliance  
31 credit pursuant to section 2 of this act until he or she has  
32 received an orientation by the department regarding supervision  
33 compliance credit.

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# SENATE BILL REPORT

## SB 6281

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As Reported by Senate Committee On:  
Human Services & Corrections, January 30, 2018  
Ways & Means, February 5, 2018

**Title:** An act relating to allowing specified offenders to earn positive achievement time on community custody.

**Brief Description:** Allowing specified offenders to earn positive achievement time on community custody.

**Sponsors:** Senators Darneille, O'Ban, Dhingra, Kuderer and Hasegawa.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/16/18, 1/30/18 [DPS-WM].  
Ways & Means: 2/05/18 [w/oRec, DNP].

**Brief Summary of First Substitute Bill**

- Allows an offender sentenced to community custody to earn positive achievement time if the offender is in compliance with supervision terms.
- Provides that 15 days of positive achievement time may be earned for each month of community custody served.
- Provides a list of conditions that would disqualify the offender from earning positive achievement time.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 6281 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; O'Ban, Ranking Member; Carlyle, Frockt and Miloscia.

**Staff:** Kevin Black (786-7747)

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### SENATE COMMITTEE ON WAYS & MEANS

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

**Majority Report:** That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Braun, Ranking Member; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Van De Wege, Wagoner and Warnick.

**Minority Report:** Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member; Brown and Schoesler.

**Staff:** Travis Sugarman (786-7446)

**Background:** Community custody is a portion of an offender's sentence served in the community, subject to controls placed by the Department of Corrections (DOC) on the offender's movement and activities. Certain offenders sentenced to prison must be sentenced to a term of community custody. Terms of community custody depend on the type of offense. Mandatory terms of community custody for certain offenses are:

- a three-year term for a sex offense or serious violent offense;
- an 18-month term for a violent offense, rather than a serious violent offense;
- a one-year term for crimes against persons, unlawful possession of a firearm when the offender is a criminal street gang member, certain drug offenses, or failure to register as a sex offender; and
- a length of term as authorized by statute for a sentencing alternative.

A court may impose up to one year of community custody for offenders who will be sentenced to a term of confinement for one year or less and therefore will serve their term of confinement in jail. Statute dictates which offenders sentenced to a term of community custody the DOC is required to supervise. DOC may not supervise any offender for which there is not express statutory authorization.

DOC is required to supervise all sex offenders, serious violent offenders, dangerous mentally ill offenders, offenders under the jurisdiction of the Indeterminate Sentence Review Board, offenders convicted of failure to register, certain domestic violence offenders, offenders serving a sentencing alternative, offenders under the Interstate Compact, and felony DUI offenders. For any other offender sentenced to a term of community custody, DOC is only required to supervise the offender if the offender is assessed at a high risk to reoffend. Unless the offender qualifies for a First-Time Offender Waiver, the statute does not authorize a term of community custody for any offender convicted of a property offense.

**Summary of Bill (First Substitute):** An offender sentenced to a term of community custody may earn positive achievement time. DOC must award positive achievement time to offenders who are in compliance with supervision terms and who are making progress towards the goals of their individualized supervision case plan.

Offenders may earn 15 days of positive achievement time for each month of community custody served. Positive achievement time is accrued monthly and may not be awarded until it is earned. An offender who is sentenced as a sex offender, for aggravated murder 1, who has received a First-Time Offender Waiver, parenting sentencing alternative, drug offender sentencing alternative, or special sex offender sentencing alternative, who is subject to supervision under the Interstate Compact for Adult Offender Supervision, has an

indeterminate sentence subject to parole, or who is serving community custody related to early release provisions applicable to persons committed prior to their 18th birthday may not earn positive achievement time.

DOC has discretion to implement this act over a 21-month period. An offender is not eligible to earn positive achievement time until the offender has received an orientation.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (First Substitute):** The time available for DOC to implement the bill is increased from 12 to 21 months.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):** *The committee recommended a different version of the bill than what was heard.* OTHER: DOC is neutral on this bill. We believe it is good policy to expand the swift and certain model by applying incentives for positive behavior. Research and best practices support the use of both positive and negative incentives to effectively change behavior. A "swift and certain and fair" model is used in other states. The current Washington model uses negative incentives; a more comprehensive model would pair these with incentives for positive behavior. While this is good policy, it would add complexity and require resources for policy development. DOC would recommend adding an additional 6-12 months of implementation time.

**Persons Testifying (Human Services & Corrections):** OTHER: Alex MacBain, DOC.

**Persons Signed In To Testify But Not Testifying (Human Services & Corrections):** James McMahan, WA Assn. of Sheriffs and Police Chiefs.

**Staff Summary of Public Testimony (Ways & Means):** No public hearing was held.

**Persons Testifying (Ways & Means):** N/A.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** N/A.

# SENATE BILL REPORT

## ESSB 5934

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As Passed Senate, June 30, 2017

**Title:** An act relating to convicted persons.

**Brief Description:** Concerning convicted persons.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senator Padden).

**Brief History:**

**Committee Activity:** Law & Justice: 5/02/17 [DPS, DNP].

**Floor Activity:**

**Third Special Session:** Passed Senate: 6/30/17, 29-20.

### Brief Summary of Engrossed Substitute Bill

- Increases criminal penalties for sexual offenses against children and habitual property offenders.
- Adjusts community custody caseload by: (1) authorizing earned time for community custody sentences; (2) making concurrent supervision the default when there are multiple supervision sentences for multiple offenses; and (3) instituting a pilot project for the supervision of offenders convicted of motor vehicle related offenses.
- Reduces prison caseload by removing the sunset date from the existing drug sentencing grid.
- Creates a program that provides state-issued identicards to certain offenders released from prison.
- Adds malicious mischief involving motor vehicle offenses to the list of motor vehicle crimes that are triple scored and increases the seriousness level for third and subsequent motor vehicle related offenses.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5934 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel and Wilson.

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

**Minority Report:** Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Frockt.

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

**Background:** Sentencing Reform Act (SRA). In 1981, the Legislature passed the SRA, which established determinate sentencing for felony offenders. The SRA eliminated indeterminate sentences and parole in Washington, with some exceptions. Instead, the SRA determines a specific sentence within the statutory maximum. Judges determine an offender's sentence within a sentence range provided in statute, which is calculated using the severity or seriousness level of the offense and the offender's criminal history score calculated using points based on the offender's past convictions. The standard sentence range for any offense that is not a drug offense is established by referring to the standard sentencing grid.

The Legislature and citizens, through the initiative process, have utilized various mechanisms for increasing sentences beyond the standard sentence range for offenses perceived as a greater threat to public safety. Those mechanisms include:

1. *Sentencing enhancements*. Enhancements typically add time to a sentence if the offender is found guilty of a particular act. This time is generally not eligible for good time credits.
2. *Additional scoring*. Repeat offenders may be subject to double or triple scoring of offenses that will increase the offender's criminal history score and result in a higher standard sentencing range on the sentencing grid.
3. *Increased seriousness level*. The Legislature may increase the seriousness level of a particular crime, resulting in a higher standard sentencing range on the sentencing grid.
4. *Consecutive/concurrent sentences*. The court may require a term of confinement or community custody to run consecutively instead of concurrently, lengthening the offender's term of confinement or supervision.

Sentencing for Drug Offenses. In 2003, the Legislature adopted a separate sentencing grid that applies to drug offenses. 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.

Community Custody. Certain offenders sentenced to prison must also be sentenced to a term of community custody. Terms of community custody depend on the type of offense. Mandatory terms of community custody for certain offenses are as follows:

- a three-year term for a sex offense or serious violent offense;
- an 18-month term for a violent offense, rather than a serious violent offense;
- a one-year term for crimes against persons, unlawful possession of a firearm when the offender is a criminal street gang member, certain drug offenses, or failure to register as a sex offender; and
- a length of term as authorized by statute for a sentencing alternative.

The court may impose up to one year of community custody for offenders who will be sentenced to a term of confinement for one year or less and therefore will serve their term of confinement in jail. Those offenses include any of the above listed offenses and offenders sentenced to a sentencing alternative for a First Time Offender Waiver (FTOW). Statute dictates which offenders sentenced to a term of community custody the Department of Corrections (DOC) is required to supervise. DOC may not supervise any offender for which there is not express statutory authorization.

DOC is required to supervise all sex offenders, serious violent offenders, dangerous mentally ill offenders, offenders under the jurisdiction of the Indeterminate Sentence Review Board, offenders convicted of failure to register, certain domestic violence offenders, offenders serving a sentencing alternative, offenders under the Interstate Compact, and felony DUI offenders. For any other offender sentenced to a term of community custody, DOC is only required to supervise the offender if the offender is assessed at a high risk to reoffend.

Unless the offender qualifies for a FTOW, the statute does not authorize a term of community custody for any offender convicted of a property offense. Sixty percent of the offenders supervised by DOC serve their confinement time in jail and are not sentenced to the custody of DOC.

**Summary of Engrossed Substitute Bill:** Part I - Seriousness Level of Crimes. The seriousness level for residential burglary is increased from a seriousness level 4 to a seriousness level 5.

Part II - Community Custody: Concurrent. Terms of community custody run concurrently when an offender is serving consecutive terms of confinement on multiple sentences, unless a court specifically orders otherwise. The DOC must also recalculate end dates for community custody, supervision, and placement so that they run concurrently to previously imposed sentences and it applies to all offenders currently in confinement or under active supervision. The recalculations do not create any expectations that any term will end before July 1, 2017.

Part III - Community Custody: Motor Vehicle Offense Pilot. A two-year pilot program, requiring the DOC to supervise persons convicted of felonies relating to the theft or taking of a motor vehicle regardless of the risk level assessed by the Department, is established.

Part IV - Community Custody: Good Time. Individuals serving a community supervision sentence may earn positive time for complying with their supervision plan. Earned time is

calculated at 10 days of positive time for each 30 days in complete compliance, excluding during the first and last month.

Part V - Habitual Property Offenders. A special allegation may be brought for habitual property offenders when the offender has a criminal history score of nine points or higher in certain property crimes. Once a person is found beyond a reasonable doubt based on the evidence to be a habitual property offender, the allegation requires an addition 24 months in total confinement for a Class B felony and an additional 12 months for a Class C felony.

Part VI - Motor Vehicle Property Offenders. Malicious mischief in the first and second degree involving a motor vehicle are added to the list of motor vehicle offenses that are triple scored in calculating an offender's criminal history score.

The seriousness level is increased by one for the following seven vehicle property crime convictions, if the offender is being sentenced for a third or subsequent offense:

- taking a motor vehicle without permission 1;
- malicious mischief 1 - motor vehicle;
- possession of a stolen vehicle;
- theft of a motor vehicle;
- malicious mischief 2 - motor vehicle;
- taking a motor vehicle without permission 2; and
- vehicle prowl 1.

Part VII - Identicards for Persons Released from the Department of Corrections. The DOC, working in conjunction with the Department of Licensing (DOL), creates and implements a program to provide state-issued identicards. DOC must inquire as to a person's immigration status prior to the issuance of an identicard. DOL charges an \$18 fee for each identicard issued under the program.

Part VIII - Applicability and Expiration. The sunset date for the drug grid changes from the 2013-15 biennium is removed.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill (First Special Session 2017):** *The committee recommended a different version of the bill than what was heard.* OTHER: We appreciate the changes that were made in the bill. We are testifying as other because of Part 1 increasing the seriousness level for certain sex crimes—all of those crimes have pretty lengthy sentences already and some are determinate plus. The proposal wouldn't have an impact for about six to ten years at which time it would have an increase of approximately 400 beds. There are other policies that would be a better use of 400 beds. There are already quite a few tools available for these offenders.

We have problems with sections 2 and 4. We understand that there is a need for savings to pay for other parts of the bill, but we want to make clear where those savings come from. It comes from a reduction in work force for community corrections officers in supervising offenders out in the community. We do not believe the proposals for earned time and concurrent community custody are the right way to go about this.

The identicard program offers a positive step in community safety by providing offenders leaving custody with identification. Identification is necessary to access housing and employment. Providing offenders leaving custody with an ID removes a significant barrier to successful reentry. DOC continues to be challenged by the continual changes to sentencing structure. This bill has some provisions that reduce complexity including concurrent supervision and the elimination of the sunset for the drug grid. However, we want to point out that the bill increases complexity by establishing positive achievement time and providing motor vehicle related offense supervision. DOC would ask for an additional 6 to 12 months to implement. DOC believes that supervision should be targeted to high risk offenders. Also, the report is due too early. Many offenders will not be out of prison yet. DOC generally uses a three-year return to prison after release as a review. Records and other staff will need to be trained to these changes to make sure audit and hand calculations are correct.

The city and county of Spokane are huge supporters of supervision for motor vehicle related offenses. If a statewide program for supervision of motor vehicle offenders cannot be funded, we would remind the committee that Spokane has laid the foundation to do this on a smaller, local basis.

SB 5294 has already been passed out of the committee with measures to address complexity in sentencing laws. The provisions of this bill are inconsistent with that goal. Under the habitual property offender provisions, the court is making the determination beyond a reasonable doubt as to whether the person is a habitual property offender. This needs to be a determination by the jury.

**Persons Testifying:** OTHER: Tom McBride, WA Association of Prosecuting Attorneys; Alex McBain, Department of Corrections; Devon Schrum, Department of Corrections; Larry Jefferson, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Sean Raybell, Washington Federation of State Employees; Damon Brown, Washington Federation of State Employees; Matt Zuvich, Washington Federation of State Employees; Luke Esser, City of Spokane.

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

# HOUSE BILL REPORT

## ESSB 5934

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As of Second Reading

**Title:** An act relating to convicted persons.

**Brief Description:** Concerning convicted persons.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senator Padden).

**Brief History:**

**Committee Activity:**

None.

### Brief Summary of Engrossed Substitute Bill

- Removes the expiration date for a change to the drug sentencing grid that reduces the maximum sentence for certain drug offenders.
- Increases the seriousness levels of multiple offenses, including Residential Burglary and certain third and subsequent motor vehicle-related offenses.
- Adds Malicious Mischief (first and second degree) involving a motor vehicle to the list of offenses that require special scoring at sentencing, and to the list of offenses that are triple scored for purposes of sentencing for certain motor vehicle-related felonies.
- Creates a sentencing enhancement applicable when an offender is found by special allegation to be a habitual property offender.
- Authorizes the Department of Corrections (DOC) to award positive achievement time ("good time") to offenders who are in compliance with their conditions of community custody, thereby reducing their period of community custody.
- Requires terms of community custody to run concurrently when an offender is serving consecutive terms of confinement for multiple sentences.
- Creates a two-year pilot project allowing courts to mandate certain property offenders serve one year in community custody.
- Requires the DOC and the Department of Licensing to provide state-issued identicards to certain offenders released from confinement.

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

**Staff:** Omeara Harrington (786-7136) and Kelly Leonard (786-7147).

## **Background:**

### Criminal Sentencing.

For felony convictions, the Sentencing Reform Act (SRA) provides the framework for determining the length of sentences. Base sentences are determined by reference to a sentencing grid, which provides a standard range of months of confinement. This range is based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. The seriousness level of an offense is designated in statute, and ranges from level I to level XVI, The offender score may vary from zero to nine plus points depending on certain factors. A higher seriousness level and offender score result in longer terms of confinement.

In addition to the standard range, other factors affect the sentence, including: enhancements; exceptional sentences; consecutive and concurrent sentences; persistent offender ("Three Strikes" and "Two Strikes") laws; and alternative sentences. Any factor increasing a defendant's sentence above the standard range, other than the fact of a prior conviction, must be proven to the jury beyond a reasonable doubt.

Generally, an offender who is convicted and receives a sentence of confinement greater than one year must serve that term of confinement in a state prison facility. An offender who receives a sentence of confinement of less than one year must serve that term of confinement in a local jail.

### Drug Sentencing Grid.

Felony drug offenses are sentenced according to a grid that is separate from the grid for sentencing other felony offenses. Prior to 2013, a person with an offender score of 3 to 5 who was being sentenced for a drug offense ranked at seriousness level I would have a presumptive sentence range of 6+ to 18 months. In 2013, the drug grid was changed to narrow the presumptive range for an offender meeting these criteria to 6+ to 12 months. The narrowed range is temporary and expires July 1, 2018, at which time the former presumptive sentence range of 6+ to 18 months is reinstated.

The drug offenses ranked at seriousness level I include: Forged Prescription; Manufacturing, Delivering, or Possession with Intent to Deliver Marijuana; Possession of a Controlled Substance; and Unlawful Use of a Building for Drug Purposes.

### Sentencing Enhancements.

The court must impose a specified number of months or years of imprisonment in addition to the standard sentencing range if the conditions for a sentencing enhancement are met. Enhancements must generally be served in total confinement, meaning 24 hour per day confinement inside the physical boundaries of a correctional facility.

Sentencing enhancements apply to: certain felony traffic offenses; offenses committed while armed with a firearm or deadly weapon; drug offenses taking place in a protected zone, in the presence of a child, or in a correctional facility; certain sex offenses; offenses involving

assault of a law enforcement officer; criminal street gang offenses in which a minor becomes involved through compensation, threat, or solicitation; and robbery of a pharmacy.

Residential Burglary.

A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle. Residential Burglary is a class B felony and seriousness level IV offense.

Malicious Mischief.

A person who knowingly and maliciously causes damage to the property of another is guilty of Malicious Mischief. Among other circumstances, a person commits Malicious Mischief in the first degree if he or she knowingly and maliciously damages property with a value of over \$5,000 or causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle, government property, or a mode of public transportation. A person commits a second degree offense by causing property damage in an amount over \$750, but not exceeding \$5,000, or creating substantial risk of interruption or impairment of service rendered to the public through the conduct described with respect to the first degree offense.

Malicious Mischief in the first degree is a class B felony ranked at seriousness level II. Malicious Mischief in the second degree is a class C felony ranked at seriousness level I.

Motor Vehicle Offenses.

*Theft of a Motor Vehicle.* "Theft" means to wrongfully obtain, exert unauthorized control over, or obtain by color or aid of deception, the property or services of another person, or to appropriate the lost or misdelivered property or services of another person, with intent to deprive the other person of his her of such property or services. Theft of a Motor Vehicle is a class B felony offense, ranked at seriousness level II.

*Taking a Motor Vehicle Without Permission.* A person commits the crime of Taking a Motor Vehicle Without Permission if he or she intentionally takes or drives away a motor vehicle without the owner's permission. It is a first degree offense if the defendant takes certain further action with the vehicle, including: altering the vehicle for purposes of changing its appearance or identification; intending to sell the vehicle or its parts; or exporting the vehicle across state lines for profit. A person is guilty of a second degree offense if none of the identified further action is taken, or if the person voluntarily rides in a vehicle with knowledge that it was unlawfully taken.

A first degree offense of Taking a Motor Vehicle Without Permission is a class B felony with a seriousness level ranking of V; in the second degree, it is a class C felony offense ranked at seriousness level I.

*Possession of a Stolen Vehicle.* A person commits the crime of Possession of a Stolen Vehicle if he or she is in possession of a vehicle that is stolen, meaning that it has been obtained by means of theft, robbery, or extortion. Possession of a Stolen Vehicle is a class B felony, ranked at seriousness level II.

*Vehicle Prowling.* A person commits the offense of Vehicle Prowling in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a motor home or a vessel equipped for propulsion that has a cabin with permanent sleeping quarters or cooking facilities. It qualifies as Vehicle Prowling in the second degree when the vehicle is not a motor home or qualifying vessel. Vehicle Prowling in the first degree is a class C felony offense, ranked at seriousness level I. Vehicle Prowling in the second degree is a gross misdemeanor, unless the person has two prior offenses, in which case it is an unranked class C felony.

#### Scoring for Motor Vehicle Offenses.

Special scoring provisions apply when sentencing for a present conviction of Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without Permission (first or second degree). When calculating an offender score for one of these offenses, each prior conviction for Vehicle Prowling in the second degree counts as one point. In addition, prior convictions for certain motor vehicle-related felonies count as three points. These offenses are: Theft involving a motor vehicle (first and second degree); Theft of a Motor Vehicle; Possession of Stolen Property involving a motor vehicle (first or second degree); Possession of a Stolen Vehicle; and Taking a Motor Vehicle Without Permission (first and second degree).

#### 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). While on community custody, offenders are subject to a variety of conditions. 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.

Courts are mandated to order community custody for offenders convicted of certain crimes, and DOC may not supervise any offender without express statutory authorization to do so.

Terms of community custody depend on the type of offense, as follows:

- 3 years for a sex offense or serious violent offense;
- 18 months for a violent offense;
- one year for crimes against persons, unlawful possession of a firearm when the offender is a criminal street gang member, certain drug offenses, or failure to register as a sex offender; and
- other lengths as authorized by statute for sentencing alternatives, offenders serving indeterminate sentences, and others.

State law does not generally authorize a term of community custody for any offender convicted of a property offense.

While some offenders are eligible for earned early release from incarceration for good behavior and good performance ("good time"), there is no similar allowance for community custody. The DOC is not currently permitted to reduce an offender's time on community custody based on his or her good behavior.

#### Consecutive v. Concurrent Terms.

When an offender is convicted for multiple offenses in the same case, the court imposes separate sentences, including terms of confinement, for each offense. The SRA generally requires the multiple sentences to run concurrently, which means the offender serves both sentences simultaneously. However, there are exceptions to the requirement for concurrent sentences, including when an offender:

- committed two or more serious violent offenses arising from separate and distinct criminal conduct;
- committed a new offense while still serving his or her sentence for a previous felony, including during a period of community custody; and
- receives multiple convictions from different jurisdictions for offenses committed while he or she was not serving a sentence, and a judge orders the sentences to run consecutively.

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, those terms of community custody are also served consecutively. The aggregate of the community custody period may not exceed 24 months.

Identicards for Offenders.

The Department of Licensing (DOL) issues identification cards known as identicards. The DOL and the DOC previously administered a pilot identicard program within the Monroe Correctional Complex (MCC). The program provided offenders with a state-issued identicard, which expired on the first anniversary of the offender's birthdate after issuance. Expenditures for the pilot program were funded out of the 2014 Supplemental Operating Budget.

**Summary of Bill:**

Drug Sentencing Grid.

The July 1, 2018, expiration date on the current statutory drug sentencing grid is removed, and the presumptive range of 6+ to 12 months remains in effect for a person with an offender score of 3 to 5 who is being sentenced for a drug offense ranked at seriousness level I.

Changes to Seriousness Levels.

The seriousness level designation for Residential Burglary is increased by one level, making it a level V offense.

The seriousness level designations for third or subsequent offenses of certain motor vehicle-related felonies are increased by one level, as follows:

Offense	Seriousness Level
Taking a Motor Vehicle Without Permission in the 1st Degree	VI

Taking a Motor Vehicle Without Permission in the 2nd Degree	II
Malicious Mischief involving a motor vehicle in the 1st Degree	III
Malicious Mischief involving a motor vehicle in the 2nd Degree	II
Possession of a Stolen Vehicle	III
Theft of a Motor Vehicle	III
Vehicle Prowl in the 1st Degree	II

Scoring of Motor Vehicle Offenses.

First and second degree Malicious Mischief offenses involving a motor vehicle are added to the list of present motor vehicle-related offenses for which the offender score includes one point for prior offenses of Vehicle Prowl in the second degree and three points for certain other motor vehicle-related prior felony offenses. In addition, prior offenses of first and second degree Malicious Mischief involving a motor vehicle count as three points toward an offender score for purposes of sentencing for a present conviction for listed motor vehicle-related felonies.

Habitual Property Offender Enhancement.

A mandatory sentencing enhancement is created for habitual property offenders. A person qualifies as a habitual property offender if:

- the person has an offender score of nine points or higher;
- the present felony conviction is for Residential Burglary, Burglary in the second degree, Theft in the first or second degree, Theft of a Firearm, Unlawful Issuance of Checks or Drafts, Organized Retail Theft, Theft with Special Circumstances, or Mail Theft; and at least nine of the points toward the person's offender score result from one of these offenses or a combination of these offenses; and
- the person has either received drug treatment related to any felony conviction, or has refused drug treatment related to any felony conviction.

The prosecutor must assert by special allegation that the defendant qualifies as a habitual property offender. If the court makes a finding of fact prior to sentencing that the special allegation has been established beyond a reasonable doubt, additional time must be added to the standard sentence range. If the offender is being sentenced for a class B felony, 24 months is added to the sentence. If the offender is being sentenced for a class C felony, 12 months is added to the sentence. However, the sentence cannot exceed the statutory maximum for the crime. All habitual property offender enhancements are mandatory and must be served in total confinement.

Good Time for Community Custody.

The DOC may award positive achievement time ("good time") of up to 10 days per month of community custody to offenders who are in compliance with their conditions and who are making progress toward the goals in their individualized supervision case plans. Positive achievement time is subtracted from an offender's term, thereby reducing his or her time on community custody. Several categories of offenders are not eligible to earn positive achievement time based on type of offense for which they are presently serving a sentence.

### Concurrent Community Custody.

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 so that they run concurrently to previously imposed sentences of community custody, 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. These provisions apply retroactively and prospectively regardless of the date of an offender's underlying offense.

### Motor Vehicle Offenses Community Custody Pilot.

Subject to a specific appropriation, a pilot program is established for the supervision of certain felony offenders. Until June 30, 2019, a court may sentence an offender to community custody for a term of one year for one or more of the offenses:

- Theft of a Motor Vehicle;
- Possession of a Stolen Vehicle;
- Taking a Motor Vehicle Without Permission in the first degree;
- Taking a Motor Vehicle Without Permission in the second degree; or
- a crime against property with a prior conviction of one of the above offenses.

The DOC must supervise an offender sentenced to community custody by a participating court in accordance with the conditions established by the court. The DOC must submit a report to the Governor and the appropriate committees of the Legislature analyzing the effectiveness of the pilot program in reducing recidivism.

### Identicards for Offenders.

Subject to a specific appropriation, the DOC must work in conjunction with the DOL to create and implement a program to provide a state-issued identicard to certain offenders released from confinement. An offender is eligible for an identicard through the program if he or she:

- is sentenced to DOC custody and is incarcerated within a correctional facility with an earned release date that is more than one year from his or her admission date;
- has not been found to be subject to an immigration detainer or removal order and does not become subject to a removal order during the period of incarceration;
- is expected to be released to a location within Washington; and
- pays a fee of \$18 for the cost of the identicard.

An identicard issued under this program expires two years from the first anniversary of the offender's birthdate after issuance.

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**Appropriation:** None.

**Fiscal Note:** Available on substitute bill.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 201 through 206, relating to concurrent community custody terms, and 401 through 403, relating to good time for community custody, which take effect immediately, and section 704, which, due to a prior delayed effective date takes effect August 30, 2017.

**Staff Summary of Public Testimony:**

(In support) None.

(Opposed) None.

**Persons Testifying:** None.

**Persons Signed In To Testify But Not Testifying:** None.