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**SUBSTITUTE SENATE BILL 5492**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Billig, Padden, Pedersen, Holy, and Dhingra)

AN ACT Relating to sentencing of motor vehicle-related felonies; amending RCW 9.94A.501; reenacting and amending RCW 9.94A.505; adding a new section to chapter 9.94A RCW; prescribing penalties; and providing an expiration date.

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

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

(1) Notwithstanding the provisions of RCW 9.94A.701 and 9.94A.702 and subject to the provisions of this section, a court may sentence an offender to community custody for a period of six to twelve months when the midpoint of the standard sentence range is greater than one year and the person is being sentenced for one of the following crimes:

(a) Theft of a motor vehicle (RCW 9A.56.065);

(b) Possession of a stolen vehicle (RCW 9A.56.068);

(c) Taking a motor vehicle without permission in the first degree (RCW 9A.56.070);

(d) Taking a motor vehicle without permission in the second degree (RCW 9A.56.075); or

(e) Attempt of (a) or (b) of this subsection.

(2) The department shall conduct an assessment of the offender and identify programming and services that would be appropriate to address the offender's needs. To the extent possible, the department shall make available the programming identified by the assessment while the offender is on community custody.

(3) For purposes of this section, the offender's sentence of incarceration may not exceed the mid-point of the standard sentence range reduced by one-third of the ordered term of community custody.

(4) An offender receiving a sentence under this section is not eligible for earned release time under RCW 9.94A.729 in excess of one-third of the total sentence.

(5) No later than November 1, 2025, the department shall submit a report to the governor and the appropriate committees of the legislature analyzing the effectiveness of supervision in reducing recidivism among offenders committing felonies relating to the theft or taking of a motor vehicle. The department shall consult with the Washington state institute for public policy in guiding its data tracking efforts and preparing the report.

(6) This section expires June 30, 2026.

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

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

(a) Offenders convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

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

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

(b) Offenders who have:

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

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

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

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

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

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

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

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

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

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

(ii) Has a current conviction for a domestic violence felony offense where domestic violence was pleaded and proven. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an offender under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, ((~~or~~)) 9.94A.670, or section 1 of this act;

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

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

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

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

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

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

**Sec.**  RCW 9.94A.505 and 2015 c 287 s 10 and 2015 c 81 s 1 are each reenacted and amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.655, relating to the parenting sentencing alternative;

(ix) RCW 9.94A.507, relating to certain sex offenses;

(x) RCW 9.94A.535, relating to exceptional sentences;

(xi) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xii) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug;

(xiii) Section 1 of this act, relating to the theft or taking of a motor vehicle.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The sentencing court shall not give the offender credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of one of the following offenses:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

(8) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. "Crime-related prohibitions" may include a prohibition on the use or possession of alcohol or controlled substances if the court finds that any chemical dependency or substance abuse contributed to the offense.

(10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

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