**5934-S.E AMH GOOD H2961.1 - NOT FOR FLOOR USE**

**ESSB 5934** - H AMD **645**

By Representative Goodman

**NOT CONSIDERED 01/05/2018**

Strike everything after the enacting clause and insert the following:

**"PART I**

**COMMUNITY CUSTODY: CONCURRENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Assault in the second degree;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The offender shall not consume alcohol; or

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

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

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

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

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

NEW SECTION. **Sec.**  The department of corrections 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. This section applies to each offender currently in confinement or under active supervision, regardless of whether the offender is sentenced after the effective date of this section, and regardless of whether the offender's date of offense occurred prior to the effective date of this section or after.

NEW SECTION. **Sec.**  The legislature declares that the department of corrections' recalculations of community custody terms pursuant to this act 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 before July 1, 2017, is an entitlement or creates any liberty interest in their community custody term ending before July 1, 2017.

NEW SECTION. **Sec.**  The department of corrections has the authority to begin implementing sections 101 through 104 of this act upon the effective date of this section.

**PART II**

**COMMUNITY CUSTODY: MOTOR VEHICLE OFFENSE PILOT**

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

(1) Subject to the availability of amounts appropriated for this purpose, a pilot program is established for the supervision of offenders convicted of felonies relating to the theft or taking of a motor vehicle.

(2) Notwithstanding the provisions of RCW 9.94A.701, until June 30, 2019, the court may sentence an offender to community custody for a term of one year when the court sentences the person to the custody of the department for theft of a motor vehicle (RCW 9A.56.065), possession of a stolen vehicle (RCW 9A.56.068), taking a motor vehicle without permission in the first degree (RCW 9A.56.070), taking a motor vehicle without permission in the second degree (RCW 9A.56.075), or a crime against property with a prior conviction for one of the preceding motor vehicle crimes.

(3) Notwithstanding the provisions of RCW 9.94A.501, the department shall supervise any offender sentenced to community custody pursuant to subsection (2) of this section so long as the offender's risk assessment classifies him or her as one who is at a high risk to reoffend.

(4) No later than November 1, 2020, the department must 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.

(5) This section expires December 31, 2020.

**PART III**

**COMMUNITY CUSTODY: GOOD TIME**

**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;

(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.

(9) The period of time the department is authorized to supervise an offender under this section may be reduced by the earned award of positive achievement time pursuant to section 302 of this act.

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

(1) If an offender sentenced under this chapter or chapter 9.94B RCW is supervised by the department, the offender may earn positive achievement time in accordance with procedures that are developed and adopted by the department.

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

(b) For each month of community custody served, offenders may earn positive achievement time of ten days.

(c) Positive achievement time is accrued monthly and time shall not be applied to an offender's term of supervision prior to the earning of the time.

(2) An offender is not eligible to earn positive achievement time if he or she:

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

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

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

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

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

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

NEW SECTION. **Sec.**  The department of corrections has discretion to implement sections 301 and 302 of this act over a period of time not to exceed eighteen months. For any offender under active supervision by the department as of the effective date of this section, he or she is not eligible to earn positive achievement time pursuant to section 302 of this act until he or she has received an orientation by the department regarding positive time.

**PART IV**

**IDENTICARDS FOR PERSONS RELEASED FROM DEPARTMENT OF CORRECTIONS**

NEW SECTION. **Sec.**  The legislature intends to create an identicard program to assist incarcerated offenders to obtain a state-issued identicard to aid and prepare offenders for release from prison and reentry into the community. The legislature finds that each step that assists individuals being released from prisons helps incarcerated offenders avoid predictable conditions that lead to future recidivism. In accordance with executive order 16-05 building safe and strong communities through successful reentry, this act intends to ensure that offenders released from state prisons have adequate identification in order to increase public safety and reduce recidivism.

NEW SECTION. **Sec.**  A new section is added to chapter 72.09 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department, working in conjunction with the department of licensing, shall create and implement an identicard program to provide offenders released within Washington state a state-issued identicard pursuant to RCW 46.20.117.

(2) An offender is eligible for an original, renewal, or replacement identicard pursuant to this section, provided he or she:

(a) Meets the department of licensing criteria under RCW 46.20.117;

(b) Is sentenced to the custody of the department, and is incarcerated within a correctional facility with an earned release date that is more than one year from his or her admission date;

(c) Is expected to be released to a location within Washington state, and is not expected to be transported or otherwise detained in a federal facility or a facility in another state; and

(d) Pays a fee of eighteen dollars for the cost of the identicard.

**Sec.**  RCW 46.20.117 and 2017 c 122 s 1 are each amended to read as follows:

(1) **Issuance**. The department shall issue an identicard, containing a picture, if the applicant:

(a)(i) Does not hold a valid Washington driver's license;

((~~(b)~~)) (ii) Proves his or her identity as required by RCW 46.20.035; and

((~~(c)~~)) (iii) Pays the required fee. Except as provided in (b) of this subsection or subsection (5) of this section, the fee is fifty-four dollars, unless an applicant is: ((~~(i)~~)) (A) A recipient of continuing public assistance grants under Title 74 RCW, who is referred in writing by the secretary of social and health services; or ((~~(ii)~~)) (B) under the age of eighteen and does not have a permanent residence address as determined by the department by rule. For those persons, the fee must be the actual cost of production of the identicard; or

(b) Is eligible for issuance of an identicard under section 402 of this act.

(i) A valid identification card issued by the department of corrections may serve as sufficient proof of identity and residency for an applicant under this subsection (1)(b);

(ii) An identicard issued under this subsection (1)(b) must expire two years from the first anniversary of the offender's birthdate after issuance; and

(iii) The department shall charge a fee of eighteen dollars for an identicard issued under this subsection (1)(b).

(2) **Design and term**. The identicard must:

(a) Be distinctly designed so that it will not be confused with the official driver's license; and

(b) Except as provided in subsection (1)(b) or (5) of this section, expire on the sixth anniversary of the applicant's birthdate after issuance.

(3) **Renewal**. An application for identicard renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b)(i) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her identicard by mail or by electronic commerce when it last expired.

(ii) An identicard may not be renewed by mail or by electronic commerce unless the renewal issued by the department includes a photograph of the identicard holder.

(4) **Cancellation**. The department may cancel an identicard if the holder of the identicard used the card or allowed others to use the card in violation of RCW 46.20.0921.

(5) **Alternative issuance/renewal/extension**. The department may issue or renew an identicard for a period other than six years, or may extend by mail or electronic commerce an identicard that has already been issued, in order to evenly distribute, as nearly as possible, the yearly renewal rate of identicard holders. The fee for an identicard issued or renewed for a period other than six years, or that has been extended by mail or electronic commerce, is nine dollars for each year that the identicard is issued, renewed, or extended. The department may adopt any rules as are necessary to carry out this subsection.

**Sec.**  RCW 46.20.117 and 2017 c 122 s 2 are each amended to read as follows:

(1) **Issuance**. The department shall issue an identicard, containing a picture, if the applicant:

(a)(i) Does not hold a valid Washington driver's license;

((~~(b)~~)) (ii) Proves his or her identity as required by RCW 46.20.035; and

((~~(c)~~)) (iii) Pays the required fee. Except as provided in (b) of this subsection or subsection (5) of this section, the fee is fifty-four dollars, unless an applicant is: ((~~(i)~~)) (A) A recipient of continuing public assistance grants under Title 74 RCW, who is referred in writing by the secretary of social and health services; or ((~~(ii)~~)) (B) under the age of eighteen and does not have a permanent residence address as determined by the department by rule. For those persons, the fee must be the actual cost of production of the identicard; or

(b) Is eligible for issuance of an identicard under section 402 of this act.

(i) A valid identification card issued by the department of corrections may serve as sufficient proof of identity and residency for an applicant under this subsection (1)(b);

(ii) An identicard issued under this subsection (1)(b) must expire two years from the first anniversary of the offender's birthdate after issuance; and

(iii) The department shall charge a fee of eighteen dollars for an identicard issued under this subsection (1)(b).

(2)(a) **Design and term**. The identicard must:

(i) Be distinctly designed so that it will not be confused with the official driver's license; and

(ii) Except as provided in subsection (1)(b) or (5) of this section, expire on the sixth anniversary of the applicant's birthdate after issuance.

(b) The identicard may include the person's status as a veteran, consistent with RCW 46.20.161(2).

(3) **Renewal**. An application for identicard renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b)(i) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her identicard by mail or by electronic commerce when it last expired.

(ii) An identicard may not be renewed by mail or by electronic commerce unless the renewal issued by the department includes a photograph of the identicard holder.

(4) **Cancellation**. The department may cancel an identicard if the holder of the identicard used the card or allowed others to use the card in violation of RCW 46.20.0921.

(5) **Alternative issuance/renewal/extension**. The department may issue or renew an identicard for a period other than six years, or may extend by mail or electronic commerce an identicard that has already been issued, in order to evenly distribute, as nearly as possible, the yearly renewal rate of identicard holders. The fee for an identicard issued or renewed for a period other than six years, or that has been extended by mail or electronic commerce, is nine dollars for each year that the identicard is issued, renewed, or extended. The department may adopt any rules as are necessary to carry out this subsection.

NEW SECTION. **Sec.**  The department of corrections and the department of licensing may enter into a memorandum of understanding to meet the requirements of sections 402 through 404 of this act, and have discretion to implement sections 402 through 404 of this act over a period of time not to exceed twelve months from the effective date of this section.

**PART V**

**APPLICABILITY AND EXPIRATION**

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

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

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

(1)2015 c 291 s 9;

(2)2015 c 291 s 15 (uncodified); and

(3)2015 c 291 s 16 (uncodified).

NEW SECTION. **Sec.**  Sections 101 through 104 of this act apply retroactively and prospectively regardless of the date of an offender's underlying offense.

NEW SECTION. **Sec.**  Section 404 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 30, 2017.

NEW SECTION. **Sec.**  Section 403 of this act expires August 30, 2017.

NEW SECTION. **Sec.**  Sections 101 through 106, 301 through 303, and 403 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately."

Correct the title.

EFFECT: (1) Removes the following from the bill: Changes to seriousness levels for residential burglary and motor-vehicle offenses; changes to sentencing scoring for malicious mischief and motor-vehicle offenses; and the creation of a sentencing enhancement for habitual property offenders.

(2) Limits the pilot program for supervising certain offenders convicted of motor vehicle-related offenses by requiring the Department of Corrections (DOC) to supervise offenders only when their risk assessments classify them at a high risk to reoffend.

(3) Provides DOC with eighteen months to implement the provisions authorizing positive achievement time ("good time") for community custody (rather than twelve months).

(4) Modifies the eligibility criteria for an offender to receive an identicard through DOC and the Department of Licensing by: Removing the requirement that the offender must not be subject to an immigration detainer or removal order; and adding the requirement that an offender must not be expected to be transported or otherwise detained in a federal facility or a facility in another state.