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HOUSE BILL 1678

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State of Washington                      65th Legislature                      2017 Regular Session

By Representative Pettigrew; by request of Department of Corrections

Read first time 01/26/17. Referred to Committee on Public Safety.

1            AN ACT Relating to allowing multiple terms of community custody  
2 to be served concurrently; amending RCW 9.94A.589 and 9.94B.050;  
3 adding a new section to chapter 9.94B RCW; creating new sections;  
4 providing an effective date; and declaring an emergency.

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

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

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

1 assault or vehicular homicide even if the victims occupied the same  
2 vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (i) Assault in the second degree;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 NEW SECTION. **Sec. 5.** The legislature declares that the  
16 department of corrections' recalculations of community custody terms  
17 pursuant to this act do not create any expectations that a particular  
18 community custody term will end before July 1, 2017, and offenders  
19 have no reason to conclude that the recalculation of their community  
20 custody terms before July 1, 2017, is an entitlement or creates any  
21 liberty interest in their community custody term ending before July  
22 1, 2017.

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

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

29 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
30 preservation of the public peace, health, or safety, or support of  
31 the state government and its existing public institutions, and takes  
32 effect July 1, 2017.

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