

# HOUSE BILL REPORT

## SHB 2394

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### As Amended by the Senate

**Title:** An act relating to community custody.

**Brief Description:** Concerning community custody.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Klippert, Goodman, Davis, Ormsby and Appleton).

**Brief History:**

**Committee Activity:**

Public Safety: 1/21/20, 1/30/20 [DPS];

Appropriations: 2/8/20 [DPS(PS)].

**Floor Activity:**

Passed House: 2/13/20, 94-2.

Senate Amended.

Passed Senate: 3/4/20, 47-1.

#### Brief Summary of Substitute Bill

- Requires terms of community custody to run concurrently when a person is serving consecutive terms of confinement for multiple sentences, unless a court specifically orders otherwise.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Staff:** Kelly Leonard (786-7147).

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Ormsby, Chair;

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Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

**Minority Report:** Do not pass. Signed by 1 member: Representative Kraft.

**Staff:** Yvonne Walker (786-7841).

**Background:**

Community Custody.

Community custody is the portion of a person's criminal sentence served in the community under the supervision of the Department of Corrections (DOC) following his or her release from confinement in a state correctional facility. Courts are mandated to order community custody for persons convicted of certain crimes. While on community custody, a person is subject to conditions imposed by the court and the DOC. The DOC may establish and modify conditions based on the person's risk to community safety.

The DOC may issue warrants for the arrest of any person who violates a condition of community custody. If a person violates the conditions, he or she may be subject to sanctions. Sanctions vary depending on the type of violation, the underlying offense, and other conditions. For many types of violations, a sanction can include being returned to confinement for a specified period.

Concurrent and Consecutive Sentences.

*General Requirements.* When a person is convicted for multiple offenses in the same case, the court imposes separate sentences, including terms of confinement, for each offense. In this context, state law generally requires the sentences to run concurrently, which means the person serves both sentences simultaneously, with the longest period of confinement controlling. There are exceptions to the requirement for concurrent sentences. For example, sentences must run consecutively if the person committed two or more serious violent offenses arising from separate and distinct criminal conduct.

In the case of consecutive sentences, all periods of confinement must be served before community custody. If two or more consecutive sentences include periods of community custody, the aggregate of the community custody period may not exceed 24 months.

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

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

**Summary of Substitute Bill:**

Requirements are established for terms of community custody imposed in cases with consecutive sentences, including circumstances involving multiple convictions in the same case, a conviction for a new offense while still serving a prior sentence, and convictions for multiple offenses in different jurisdictions. In these circumstances, the terms of community custody for the multiple sentences run concurrently to each other, unless the court expressly requires those terms to run consecutively.

For all persons currently in confinement or community custody, the DOC must recalculate terms of community custody so that they run concurrently, unless the court expressly required those terms to run consecutively.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment restores current law prohibiting the aggregate community custody period for consecutive sentences from exceeding 24 months.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Public Safety):**

(In support) This bill is targeted towards reducing complexity and improving public safety. When someone has multiple sentences on different causes, then multiple terms of community custody are imposed. Most courts and practitioners assume that the community custody terms are concurrent, but if the court does not make it clear on the Judgment and Sentence form, then the DOC must impose them consecutively. In the case of consecutive terms of community custody, there is considerable confusion and complexity around conditions. One case has a set of conditions (like a no-contact order), and the other case has a different set of conditions (like urinalysis to test for drug use). If the terms are consecutive, then so are the conditions. This means the person is subject to only one set of conditions at a time. This makes no sense. When someone is being supervised on multiple cases, then it is in the public's interest to impose all of the conditions at the same time. There is no reason to delay drug treatment, mental health counseling, or other conditions.

This bill retains discretion for judges to impose consecutive terms of community custody. This may be really useful for serious, violent cases. Nothing prevents a prosecutor from

asking for it. However, the default for the DOC should be to carry out these terms concurrently. Practitioners thought this was already happening, and it should be addressed.

The state should study the implementation of this bill to ensure that judicial discretion does not have a disproportionate impact on certain demographics.

Supervision is not designed to be punishment—incarceration is the punishment. To the contrary, supervision is a program oriented towards facilitating reentry and rehabilitation. Excessive terms of supervision do not help anyone.

(Opposed) The best predictor of future behavior is past behavior, and for those who commit multiple offenses, it does not make sense to effectively reduce their time on supervision. The bill will dramatically reduce supervision time for many offenders, and therefore negatively impact public safety.

There is definitely complexity in the current system, but this is not the correct approach. It is better to have an effective model than a simple one. It is not fair for someone with multiple offenses to serve the same amount of supervision as someone with one offense. This is made worse by the retroactive effect of the bill. This is not transparent, and it basically incentivizes people to commit multiple offenses.

This is not a new issue. It is rooted in sentencing complexity, and more specifically, problems with Judgment and Sentence forms. The state should focus on fixing the forms and judicial training. Revamping how the state manages community custody terms is not the solution. This bill appears to be designed to reduce caseloads and generate savings. If you combine this bill with other proposals being considered, there would be a significant reduction in supervision statewide. If the state is going to proceed with anything that reduces community custody caseloads, then it should reinvest the savings into improving corrections and community custody generally.

**Staff Summary of Public Testimony (Appropriations):**

(In support) None.

(Opposed) None.

**Persons Testifying (Public Safety):** (In support) Representative Klippert, prime sponsor; Stephen Sinclair, Mac Pevey, Lillian Wilbur, and Sarah Lewis, Department of Corrections; Russell Brown, Washington Association of Prosecuting Attorneys; Antonio Ginatta, Columbia Legal Services; and David Trieweiler, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

(Opposed) Don Malo and Jim Furchert, Washington Federation of State Employees; Chuck Carter, Department of Corrections; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Testifying (Appropriations):** None.

**Persons Signed In To Testify But Not Testifying (Public Safety):** None.

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