

# SENATE BILL REPORT

## SHB 2394

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As of February 26, 2020

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

**Committee Activity:** Human Services, Reentry & Rehabilitation: 2/25/20.

### Brief Summary of Bill

- Requires that unless the court expressly orders the community custody terms to run consecutively to each other, the terms of community custody must run concurrently, even if the confinement terms are ordered to run consecutively.
- Removes language prohibiting the aggregate community supervision period for consecutive sentences from exceeding 24 months.

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### SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Staff:** Kelsey-anne Fung (786-7479)

**Background:** Concurrent and Consecutive Sentences. Under the Sentencing Reform Act (SRA), judges determine sentences for felony offenses by selecting a determinate sentence from a range provided in statute. Ranges are determined by reference to a sentencing grid, which is based on the defendant's offender score and the seriousness level classification of the offense. When an offender is convicted for multiple offenses in the same case, the court imposes separate sentences, including terms of confinement, for each offense. In this context, the SRA generally requires the sentences to run concurrently, which means the offender serves both sentences simultaneously, with the longest period of confinement impacting the potential release date.

There are exceptions to the requirement for concurrent sentences in exceptional circumstances. For example, sentences must run consecutively if the offender committed

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two or more serious violent offenses arising from separate and distinct criminal conduct. 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 running consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed 24 months.

Conviction for a New Offense While Still Serving a Sentence. If an offender commits a new offense while still serving their 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 an offender receives multiple convictions from different jurisdictions for offenses committed while the offender was not serving a sentence, the sentences run concurrently, unless the court ordering the subsequent sentence expressly orders they run consecutively.

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) following release from confinement. Courts are mandated to order community custody for offenders convicted of certain crimes. While on community custody, offenders are subject to a variety of conditions imposed by the court and DOC. DOC must assess the offender's risk to reoffend and may establish and modify the offender's conditions of community custody based on the offender's risk to community safety and conditions imposed by the court. DOC may issue warrants for the arrest of any offender who violates a condition of community custody. If an offender violates the conditions, the offender may be required to serve up to the remaining portion of their sentence in confinement.

DOC Proposal. In 2019, DOC proposed changes to community custody to the Sentencing Guidelines Commission and the Washington Criminal Sentencing Task Force. According to DOC, current statutes lack clarity on the relationship between a current term of community custody and prior unfinished terms as to whether they should be served concurrently or consecutively. Further, different counties have different practices on how the relationships between multiple terms of community custody are reflected on the Judgment and Sentence form, creating complexity for DOC records and community corrections staff and discrepancies in entering sentences into DOC's database.

**Summary of Bill:** The terms of community custody must run concurrently to each other unless the court expressly orders community custody terms to run consecutively, even if the court orders the confinement terms to run consecutively to each other. An individual who is currently in confinement and is subsequently sentenced for another felony shall serve their confinement terms consecutively. In these circumstances, the terms of community custody shall run concurrently to each other unless the court expressly orders community custody run consecutively. The terms of community placement shall run concurrently to any period of probation, parole, community supervision, community placement or community custody, unless the court expressly orders the community placement run consecutively.

Language is removed prohibiting the aggregate community supervision period for consecutive sentences from exceeding 24 months.

For individuals currently in confinement or under active supervision, DOC must recalculate scheduled ends dates for terms of community custody, community supervision, and community placement so that the terms run concurrently to previous imposed terms, unless the court has expressly required such terms to run consecutively. This applies regardless of the date the offense occurred or the date the individual was sentenced.

DOC's recalculations of community custody terms do not create any expectations that a particular community custody term will end before July 1, 2020, and offenders have no reason to conclude the recalculation of their community custody terms before the effective date of this act is an entitlement or creates any liberty interest in their community custody term ending before July 1, 2020.

The changes apply retroactively and prospectively regardless of the date of an offender's underlying offense.

**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:** PRO: The purpose of the bill is to more accurately apply the law and the sentence terms passed down from the courts. This does not affect confinement time, but only community custody time. It still allows the court to order the terms of community custody to run consecutively, as long as the courts specify so. This takes the onus off of DOC when clarity is not available in the judgement and sentencing form and eliminates complexity for DOC staff. It also brings all the terms of community custody for cases under different jurisdictions into current and concurrent supervision so DOC can address them together instead of waiting for the next consecutive sentence to start. This was also one of the recommendations of the Sentencing Guidelines Commission because it reduces complexity and confusion, is based on research that shows quality of supervision is more important than length of supervision and that longer terms of supervision do not correlate with recidivism, and allows DOC to frontload intensive services right away instead of waiting for the next consecutive sentence to start.

CON: We agree there is a legitimate problem and confusion because courts are not doing what they are expected and required to do. However, the way to address the issue is not by reducing supervision and DOC staff spending. If the bill moves, money from savings should be statutorily directed into a dedicated account to capture the savings. This bill does not simplify sentences and will eliminate access to resources and make communities less safe.

**Persons Testifying:** PRO: Representative Brad Klippert, Prime Sponsor; Vicki Christophersen, Justice Action Network; Mac Pevey, DOC, Assistant Secretary; Lillian

Wilbur, DOC, Community Corrections Officer; David Trieweiler, Washington Association of Criminal Defense Attorneys and Washington Defender Association; Keri-Anne Jetzer, Sentencing Guidelines Commission.

CON: James McMahan, Washington Association of Sheriffs & Police Chiefs; Jim Furchert, Community Corrections Officer 3.

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