

ESSB 5934 - H AMD 645

By Representative Goodman

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "PART I

4 COMMUNITY CUSTODY: CONCURRENT

5 **Sec. 101.** RCW 9.94A.589 and 2015 2nd sp.s. c 3 s 13 are each
6 amended to read as follows:

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

23 (b) Whenever a person is convicted of two or more serious violent
24 offenses arising from separate and distinct criminal conduct, the
25 standard sentence range for the offense with the highest seriousness
26 level under RCW 9.94A.515 shall be determined using the offender's
27 prior convictions and other current convictions that are not serious
28 violent offenses in the offender score and the standard sentence
29 range for other serious violent offenses shall be determined by using
30 an offender score of zero. The standard sentence range for any
31 offenses that are not serious violent offenses shall be determined

1 according to (a) of this subsection. All sentences imposed under this
2 subsection (1)(b) shall be served consecutively to each other and
3 concurrently with sentences imposed under (a) of this subsection.
4 However, unless the court expressly orders that the community custody
5 terms run consecutively to each other, such terms shall run
6 concurrently to each other even if the court orders the confinement
7 terms to run consecutively to each other.

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

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

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

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

37 (3) Subject to subsections (1) and (2) of this section, whenever
38 a person is sentenced for a felony that was committed while the
39 person was not under sentence for conviction of a felony, the
40 sentence shall run concurrently with any felony sentence which has

1 been imposed by any court in this or another state or by a federal
2 court subsequent to the commission of the crime being sentenced
3 unless the court pronouncing the current sentence expressly orders
4 that ~~((they))~~ the confinement terms be served consecutively to each
5 other. Unless the court expressly orders that the community custody
6 terms run consecutively, such terms run concurrently to each other
7 even if the court orders the confinement terms to run consecutively
8 to each other.

9 (4) Whenever any person granted probation under RCW 9.95.210 or
10 9.92.060, or both, has the probationary sentence revoked and a prison
11 sentence imposed, that sentence shall run consecutively to any
12 sentence imposed pursuant to this chapter, unless the court
13 pronouncing the subsequent sentence expressly orders that they be
14 served concurrently.

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

23 **Sec. 102.** RCW 9.94B.050 and 2003 c 379 s 4 are each amended to
24 read as follows:

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

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

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

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

37 (i) Assault in the second degree;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 103.** A new section is added to chapter 9.94B
25 RCW to read as follows:

26 Except for exceptional sentences as authorized under RCW
27 9.94A.535, if two or more sentences that run consecutively include
28 periods of community supervision that the court has expressly ordered
29 to run consecutively, the aggregate of the community supervision
30 period shall not exceed twenty-four months.

31 NEW SECTION. **Sec. 104.** The department of corrections must
32 recalculate the scheduled end dates for terms of community custody,
33 community supervision, and community placement so that they run
34 concurrently to previously imposed sentences of community custody,
35 community supervision, community placement, probation, and parole.
36 This section applies to each offender currently in confinement or
37 under active supervision, regardless of whether the offender is
38 sentenced after the effective date of this section, and regardless of

1 whether the offender's date of offense occurred prior to the
2 effective date of this section or after.

3 NEW SECTION. **Sec. 105.** The legislature declares that the
4 department of corrections' recalculations of community custody terms
5 pursuant to this act do not create any expectations that a particular
6 community custody term will end before July 1, 2017, and offenders
7 have no reason to conclude that the recalculation of their community
8 custody terms before July 1, 2017, is an entitlement or creates any
9 liberty interest in their community custody term ending before July
10 1, 2017.

11 NEW SECTION. **Sec. 106.** The department of corrections has the
12 authority to begin implementing sections 101 through 104 of this act
13 upon the effective date of this section.

14 **PART II**
15 **COMMUNITY CUSTODY: MOTOR VEHICLE OFFENSE PILOT**

16 NEW SECTION. **Sec. 201.** A new section is added to chapter 9.94A
17 RCW to read as follows:

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

22 (2) Notwithstanding the provisions of RCW 9.94A.701, until June
23 30, 2019, the court may sentence an offender to community custody for
24 a term of one year when the court sentences the person to the custody
25 of the department for theft of a motor vehicle (RCW 9A.56.065),
26 possession of a stolen vehicle (RCW 9A.56.068), taking a motor
27 vehicle without permission in the first degree (RCW 9A.56.070),
28 taking a motor vehicle without permission in the second degree (RCW
29 9A.56.075), or a crime against property with a prior conviction for
30 one of the preceding motor vehicle crimes.

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

1 (4) No later than November 1, 2020, the department must submit a
2 report to the governor and the appropriate committees of the
3 legislature analyzing the effectiveness of supervision in reducing
4 recidivism among offenders committing felonies relating to the theft
5 or taking of a motor vehicle. The department shall consult with the
6 Washington state institute for public policy in guiding its data
7 tracking efforts and preparing the report.

8 (5) This section expires December 31, 2020.

9 **PART III**

10 **COMMUNITY CUSTODY: GOOD TIME**

11 **Sec. 301.** RCW 9.94A.501 and 2016 sp.s. c 28 s 1 are each amended
12 to read as follows:

13 (1) The department shall supervise the following offenders who
14 are sentenced to probation in superior court, pursuant to RCW
15 9.92.060, 9.95.204, or 9.95.210:

16 (a) Offenders convicted of:

17 (i) Sexual misconduct with a minor second degree;

18 (ii) Custodial sexual misconduct second degree;

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

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

21 (b) Offenders who have:

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

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

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

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

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

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

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

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

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

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

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

23 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
24 9.94A.670;

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

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

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

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

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

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

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

9 NEW SECTION. Sec. 302. A new section is added to chapter 9.94A
10 RCW to read as follows:

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

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

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

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

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

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

30 (b) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
31 9.94A.670;

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

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

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

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

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

3 **Sec. 403.** RCW 46.20.117 and 2017 c 122 s 1 are each amended to
4 read as follows:

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

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

8 ((~~b~~)) (ii) Proves his or her identity as required by RCW
9 46.20.035; and

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

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

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

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

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

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

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

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

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

37 (a) Personal appearance before the department; or

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

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

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

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

20 **Sec. 404.** RCW 46.20.117 and 2017 c 122 s 2 are each amended to
21 read as follows:

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

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

25 ((+b+)) (ii) Proves his or her identity as required by RCW
26 46.20.035; and

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

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

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

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

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

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

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

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

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

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

19 (a) Personal appearance before the department; or

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

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

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

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

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.

--- END ---