

HOUSE BILL REPORT

ESSB 5934

As of Second Reading

Title: An act relating to convicted persons.

Brief Description: Concerning convicted persons.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senator Padden).

Brief History:

Committee Activity:

None.

Brief Summary of Engrossed Substitute Bill

- Removes the expiration date for a change to the drug sentencing grid that reduces the maximum sentence for certain drug offenders.
- Increases the seriousness levels of multiple offenses, including Residential Burglary and certain third and subsequent motor vehicle-related offenses.
- Adds Malicious Mischief (first and second degree) involving a motor vehicle to the list of offenses that require special scoring at sentencing, and to the list of offenses that are triple scored for purposes of sentencing for certain motor vehicle-related felonies.
- Creates a sentencing enhancement applicable when an offender is found by special allegation to be a habitual property offender.
- Authorizes the Department of Corrections (DOC) to award positive achievement time ("good time") to offenders who are in compliance with their conditions of community custody, thereby reducing their period of community custody.
- Requires terms of community custody to run concurrently when an offender is serving consecutive terms of confinement for multiple sentences.
- Creates a two-year pilot project allowing courts to mandate certain property offenders serve one year in community custody.
- Requires the DOC and the Department of Licensing to provide state-issued identicards to certain offenders released from confinement.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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Background:

Criminal Sentencing.

For felony convictions, the Sentencing Reform Act (SRA) provides the framework for determining the length of sentences. Base sentences are determined by reference to a sentencing grid, which provides a standard range of months of confinement. This range is based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. The seriousness level of an offense is designated in statute, and ranges from level I to level XVI. The offender score may vary from zero to nine plus points depending on certain factors. A higher seriousness level and offender score result in longer terms of confinement.

In addition to the standard range, other factors affect the sentence, including: enhancements; exceptional sentences; consecutive and concurrent sentences; persistent offender ("Three Strikes" and "Two Strikes") laws; and alternative sentences. Any factor increasing a defendant's sentence above the standard range, other than the fact of a prior conviction, must be proven to the jury beyond a reasonable doubt.

Generally, an offender who is convicted and receives a sentence of confinement greater than one year must serve that term of confinement in a state prison facility. An offender who receives a sentence of confinement of less than one year must serve that term of confinement in a local jail.

Drug Sentencing Grid.

Felony drug offenses are sentenced according to a grid that is separate from the grid for sentencing other felony offenses. Prior to 2013, a person with an offender score of 3 to 5 who was being sentenced for a drug offense ranked at seriousness level I would have a presumptive sentence range of 6+ to 18 months. In 2013, the drug grid was changed to narrow the presumptive range for an offender meeting these criteria to 6+ to 12 months. The narrowed range is temporary and expires July 1, 2018, at which time the former presumptive sentence range of 6+ to 18 months is reinstated.

The drug offenses ranked at seriousness level I include: Forged Prescription; Manufacturing, Delivering, or Possession with Intent to Deliver Marijuana; Possession of a Controlled Substance; and Unlawful Use of a Building for Drug Purposes.

Sentencing Enhancements.

The court must impose a specified number of months or years of imprisonment in addition to the standard sentencing range if the conditions for a sentencing enhancement are met. Enhancements must generally be served in total confinement, meaning 24 hour per day confinement inside the physical boundaries of a correctional facility.

Sentencing enhancements apply to: certain felony traffic offenses; offenses committed while armed with a firearm or deadly weapon; drug offenses taking place in a protected zone, in the presence of a child, or in a correctional facility; certain sex offenses; offenses involving

assault of a law enforcement officer; criminal street gang offenses in which a minor becomes involved through compensation, threat, or solicitation; and robbery of a pharmacy.

Residential Burglary.

A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle. Residential Burglary is a class B felony and seriousness level IV offense.

Malicious Mischief.

A person who knowingly and maliciously causes damage to the property of another is guilty of Malicious Mischief. Among other circumstances, a person commits Malicious Mischief in the first degree if he or she knowingly and maliciously damages property with a value of over \$5,000 or causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle, government property, or a mode of public transportation. A person commits a second degree offense by causing property damage in an amount over \$750, but not exceeding \$5,000, or creating substantial risk of interruption or impairment of service rendered to the public through the conduct described with respect to the first degree offense.

Malicious Mischief in the first degree is a class B felony ranked at seriousness level II. Malicious Mischief in the second degree is a class C felony ranked at seriousness level I.

Motor Vehicle Offenses.

Theft of a Motor Vehicle. "Theft" means to wrongfully obtain, exert unauthorized control over, or obtain by color or aid of deception, the property or services of another person, or to appropriate the lost or misdelivered property or services of another person, with intent to deprive the other person of his her of such property or services. Theft of a Motor Vehicle is a class B felony offense, ranked at seriousness level II.

Taking a Motor Vehicle Without Permission. A person commits the crime of Taking a Motor Vehicle Without Permission if he or she intentionally takes or drives away a motor vehicle without the owner's permission. It is a first degree offense if the defendant takes certain further action with the vehicle, including: altering the vehicle for purposes of changing its appearance or identification; intending to sell the vehicle or its parts; or exporting the vehicle across state lines for profit. A person is guilty of a second degree offense if none of the identified further action is taken, or if the person voluntarily rides in a vehicle with knowledge that it was unlawfully taken.

A first degree offense of Taking a Motor Vehicle Without Permission is a class B felony with a seriousness level ranking of V; in the second degree, it is a class C felony offense ranked at seriousness level I.

Possession of a Stolen Vehicle. A person commits the crime of Possession of a Stolen Vehicle if he or she is in possession of a vehicle that is stolen, meaning that it has been obtained by means of theft, robbery, or extortion. Possession of a Stolen Vehicle is a class B felony, ranked at seriousness level II.

Vehicle Prowling. A person commits the offense of Vehicle Prowling in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a motor home or a vessel equipped for propulsion that has a cabin with permanent sleeping quarters or cooking facilities. It qualifies as Vehicle Prowling in the second degree when the vehicle is not a motor home or qualifying vessel. Vehicle Prowling in the first degree is a class C felony offense, ranked at seriousness level I. Vehicle Prowling in the second degree is a gross misdemeanor, unless the person has two prior offenses, in which case it is an unranked class C felony.

Scoring for Motor Vehicle Offenses.

Special scoring provisions apply when sentencing for a present conviction of Theft of a Motor Vehicle, Possession of a Stolen Vehicle, or Taking a Motor Vehicle without Permission (first or second degree). When calculating an offender score for one of these offenses, each prior conviction for Vehicle Prowling in the second degree counts as one point. In addition, prior convictions for certain motor vehicle-related felonies count as three points. These offenses are: Theft involving a motor vehicle (first and second degree); Theft of a Motor Vehicle; Possession of Stolen Property involving a motor vehicle (first or second degree); Possession of a Stolen Vehicle; and Taking a Motor Vehicle Without Permission (first and second degree).

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). While on community custody, offenders are subject to a variety of conditions. If an offender violates the conditions, the offender may be required to serve up to the remaining portion of his or her sentence in confinement.

Courts are mandated to order community custody for offenders convicted of certain crimes, and DOC may not supervise any offender without express statutory authorization to do so.

Terms of community custody depend on the type of offense, as follows:

- 3 years for a sex offense or serious violent offense;
- 18 months for a violent offense;
- one year for crimes against persons, unlawful possession of a firearm when the offender is a criminal street gang member, certain drug offenses, or failure to register as a sex offender; and
- other lengths as authorized by statute for sentencing alternatives, offenders serving indeterminate sentences, and others.

State law does not generally authorize a term of community custody for any offender convicted of a property offense.

While some offenders are eligible for earned early release from incarceration for good behavior and good performance ("good time"), there is no similar allowance for community custody. The DOC is not currently permitted to reduce an offender's time on community custody based on his or her good behavior.

Consecutive v. Concurrent Terms.

When an offender is convicted for multiple offenses in the same case, the court imposes separate sentences, including terms of confinement, for each offense. The SRA generally requires the multiple sentences to run concurrently, which means the offender serves both sentences simultaneously. However, there are exceptions to the requirement for concurrent sentences, including when an offender:

- committed two or more serious violent offenses arising from separate and distinct criminal conduct;
- committed a new offense while still serving his or her sentence for a previous felony, including during a period of community custody; and
- receives multiple convictions from different jurisdictions for offenses committed while he or she was not serving a sentence, and a judge orders the sentences to run consecutively.

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 that run consecutively include periods of community custody, those terms of community custody are also served consecutively. The aggregate of the community custody period may not exceed 24 months.

Identicards for Offenders.

The Department of Licensing (DOL) issues identification cards known as identicards. The DOL and the DOC previously administered a pilot identicard program within the Monroe Correctional Complex (MCC). The program provided offenders with a state-issued identicard, which expired on the first anniversary of the offender's birthdate after issuance. Expenditures for the pilot program were funded out of the 2014 Supplemental Operating Budget.

Summary of Bill:

Drug Sentencing Grid.

The July 1, 2018, expiration date on the current statutory drug sentencing grid is removed, and the presumptive range of 6+ to 12 months remains in effect for a person with an offender score of 3 to 5 who is being sentenced for a drug offense ranked at seriousness level I.

Changes to Seriousness Levels.

The seriousness level designation for Residential Burglary is increased by one level, making it a level V offense.

The seriousness level designations for third or subsequent offenses of certain motor vehicle-related felonies are increased by one level, as follows:

Offense	Seriousness Level
Taking a Motor Vehicle Without Permission in the 1st Degree	VI

Taking a Motor Vehicle Without Permission in the 2nd Degree	II
Malicious Mischief involving a motor vehicle in the 1st Degree	III
Malicious Mischief involving a motor vehicle in the 2nd Degree	II
Possession of a Stolen Vehicle	III
Theft of a Motor Vehicle	III
Vehicle Prowl in the 1st Degree	II

Scoring of Motor Vehicle Offenses.

First and second degree Malicious Mischief offenses involving a motor vehicle are added to the list of present motor vehicle-related offenses for which the offender score includes one point for prior offenses of Vehicle Prowl in the second degree and three points for certain other motor vehicle-related prior felony offenses. In addition, prior offenses of first and second degree Malicious Mischief involving a motor vehicle count as three points toward an offender score for purposes of sentencing for a present conviction for listed motor vehicle-related felonies.

Habitual Property Offender Enhancement.

A mandatory sentencing enhancement is created for habitual property offenders. A person qualifies as a habitual property offender if:

- the person has an offender score of nine points or higher;
- the present felony conviction is for Residential Burglary, Burglary in the second degree, Theft in the first or second degree, Theft of a Firearm, Unlawful Issuance of Checks or Drafts, Organized Retail Theft, Theft with Special Circumstances, or Mail Theft; and at least nine of the points toward the person's offender score result from one of these offenses or a combination of these offenses; and
- the person has either received drug treatment related to any felony conviction, or has refused drug treatment related to any felony conviction.

The prosecutor must assert by special allegation that the defendant qualifies as a habitual property offender. If the court makes a finding of fact prior to sentencing that the special allegation has been established beyond a reasonable doubt, additional time must be added to the standard sentence range. If the offender is being sentenced for a class B felony, 24 months is added to the sentence. If the offender is being sentenced for a class C felony, 12 months is added to the sentence. However, the sentence cannot exceed the statutory maximum for the crime. All habitual property offender enhancements are mandatory and must be served in total confinement.

Good Time for Community Custody.

The DOC may award positive achievement time ("good time") of up to 10 days per month of community custody to offenders who are in compliance with their conditions and who are making progress toward the goals in their individualized supervision case plans. Positive achievement time is subtracted from an offender's term, thereby reducing his or her time on community custody. Several categories of offenders are not eligible to earn positive achievement time based on type of offense for which they are presently serving a sentence.

Concurrent Community Custody.

The requirements for terms of community custody in the context of consecutive sentences are changed. The default rule is for terms of community custody for multiple sentences to run concurrently to each other, regardless if the terms of confinement are consecutive. However, the court may order community custody terms to run consecutively.

The DOC must recalculate the scheduled end dates for terms of community custody so that they run concurrently to previously imposed sentences of community custody, unless the court pronouncing the current sentence has expressly required the terms to run consecutively. This applies to all offenders currently in confinement or under active supervision. These provisions apply retroactively and prospectively regardless of the date of an offender's underlying offense.

Motor Vehicle Offenses Community Custody Pilot.

Subject to a specific appropriation, a pilot program is established for the supervision of certain felony offenders. Until June 30, 2019, a court may sentence an offender to community custody for a term of one year for one or more of the offenses:

- Theft of a Motor Vehicle;
- Possession of a Stolen Vehicle;
- Taking a Motor Vehicle Without Permission in the first degree;
- Taking a Motor Vehicle Without Permission in the second degree; or
- a crime against property with a prior conviction of one of the above offenses.

The DOC must supervise an offender sentenced to community custody by a participating court in accordance with the conditions established by the court. The DOC must submit a report to the Governor and the appropriate committees of the Legislature analyzing the effectiveness of the pilot program in reducing recidivism.

Identicards for Offenders.

Subject to a specific appropriation, the DOC must work in conjunction with the DOL to create and implement a program to provide a state-issued identicard to certain offenders released from confinement. An offender is eligible for an identicard through the program if he or she:

- is sentenced to DOC custody and is incarcerated within a correctional facility with an earned release date that is more than one year from his or her admission date;
- has not been found to be subject to an immigration detainer or removal order and does not become subject to a removal order during the period of incarceration;
- is expected to be released to a location within Washington; and
- pays a fee of \$18 for the cost of the identicard.

An identicard issued under this program expires two years from the first anniversary of the offender's birthdate after issuance.

Appropriation: None.

Fiscal Note: Available on substitute bill.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 201 through 206, relating to concurrent community custody terms, and 401 through 403, relating to good time for community custody, which take effect immediately, and section 704, which, due to a prior delayed effective date takes effect August 30, 2017.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.