

SHB 2394 - S COMM AMD

By Committee on Human Services, Reentry & Rehabilitation

ADOPTED 03/04/2020

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

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

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

21 (b) Whenever a person is convicted of two or more serious violent  
22 offenses arising from separate and distinct criminal conduct, the  
23 standard sentence range for the offense with the highest seriousness  
24 level under RCW 9.94A.515 shall be determined using the offender's  
25 prior convictions and other current convictions that are not serious  
26 violent offenses in the offender score and the standard sentence  
27 range for other serious violent offenses shall be determined by using  
28 an offender score of zero. The standard sentence range for any  
29 offenses that are not serious violent offenses shall be determined  
30 according to (a) of this subsection. All sentences imposed under this  
31 subsection (1)(b) shall be served consecutively to each other and  
32 concurrently with sentences imposed under (a) of this subsection.

1 Even if the court orders the confinement terms to run consecutively  
2 to each other, the terms of community custody shall run concurrently  
3 to each other, unless the court expressly orders the community  
4 custody terms to run consecutively to each other.

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

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

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

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

34 (3) Subject to subsections (1) and (2) of this section, whenever  
35 a person is sentenced for a felony that was committed while the  
36 person was not under sentence for conviction of a felony, the  
37 sentence shall run concurrently with any felony sentence which has  
38 been imposed by any court in this or another state or by a federal  
39 court subsequent to the commission of the crime being sentenced  
40 unless the court pronouncing the current sentence expressly orders

1 that (~~they~~) the confinement terms be served consecutively to each  
2 other. Even if the court orders the confinement terms to run  
3 consecutively to each other, the terms of community custody shall run  
4 concurrently to each other, unless the court expressly orders the  
5 community custody terms to run consecutively to each other.

6 (4) Whenever any person granted probation under RCW 9.95.210 or  
7 9.92.060, or both, has the probationary sentence revoked and a prison  
8 sentence imposed, that sentence shall run consecutively to any  
9 sentence imposed pursuant to this chapter, unless the court  
10 pronouncing the subsequent sentence expressly orders that they be  
11 served concurrently.

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

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

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

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

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

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

34 (i) Assault in the second degree;

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (e) The residence location and living arrangements shall be  
38 subject to the prior approval of the department during the period of  
39 community placement.

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

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

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

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

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

11 (e) The offender shall comply with any crime-related  
12 prohibitions.

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

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

21 NEW SECTION. **Sec. 3.** The department of corrections must  
22 recalculate the scheduled end dates for terms of community custody,  
23 community supervision, and community placement so that they run  
24 concurrently to previously imposed sentences of community custody,  
25 community supervision, community placement, probation, and parole,  
26 unless the court pronouncing the current sentence has expressly  
27 required such terms to run consecutively. This section applies to  
28 each offender currently in confinement or under active supervision,  
29 regardless of whether the offender is sentenced after the effective  
30 date of this section and regardless of whether the offender's date of  
31 offense occurred prior to the effective date of this section or  
32 after.

33 NEW SECTION. **Sec. 4.** The legislature declares that the  
34 department of corrections' recalculations of community custody terms  
35 pursuant to this act do not create any expectations that a particular  
36 community custody term will end before July 1, 2020, and offenders  
37 have no reason to conclude that the recalculation of their community  
38 custody terms before July 1, 2020, is an entitlement or creates any

1 liberty interest in their community custody term ending before July  
2 1, 2020.

3 NEW SECTION. **Sec. 5.** The department of corrections has the  
4 authority to begin implementing this act upon the effective date of  
5 this section.

6 NEW SECTION. **Sec. 6.** This act applies retroactively and  
7 prospectively, regardless of the date of an offender's underlying  
8 offense."

**SHB 2394** - S COMM AMD

By Committee on Human Services, Reentry & Rehabilitation

**ADOPTED 03/04/2020**

9 On page 1, line 1 of the title, after "custody;" strike the  
10 remainder of the title and insert "amending RCW 9.94A.589 and  
11 9.94B.050; creating new sections; and prescribing penalties."

EFFECT: Restores current law prohibiting the aggregate community supervision period for consecutive sentences from exceeding twenty-four months.

--- END ---