

SSB 5848 - S AMD 784

By Senator Darneille

NOT CONSIDERED 12/23/2019

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.
33 However, unless the court expressly orders that the community custody

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

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

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

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

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

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

1 other. Unless the court expressly orders that the community custody
2 terms run consecutively, such terms of community custody run
3 concurrently to each other even if the court orders the confinement
4 terms to run consecutively to each other.

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

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

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

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

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

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

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

33 (i) Assault in the second degree;

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

35 (iii) A crime against persons where it is determined in
36 accordance with RCW (~~9.94A.602~~) 9.94A.825 that the offender or an
37 accomplice was armed with a deadly weapon at the time of commission;
38 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 **Sec. 3.** RCW 9.94A.729 and 2015 c 134 s 4 are each amended to
22 read as follows:

23 (1)(a) The term of the sentence of an offender committed to a
24 correctional facility operated by the department may be reduced by
25 earned release time in accordance with procedures that shall be
26 developed and adopted by the correctional agency having jurisdiction
27 in which the offender is confined. The earned release time shall be
28 for good behavior and good performance, as determined by the
29 correctional agency having jurisdiction. The correctional agency
30 shall not credit the offender with earned release credits in advance
31 of the offender actually earning the credits.

32 (b) Any program established pursuant to this section shall allow
33 an offender to earn early release credits for presentence
34 incarceration. If an offender is transferred from a county jail to
35 the department, the administrator of a county jail facility shall
36 certify to the department the amount of time spent in custody at the
37 facility and the number of days of early release credits lost or not
38 earned. The department may approve a jail certification from a
39 correctional agency that calculates early release time based on the

1 actual amount of confinement time served by the offender before
2 sentencing when an erroneous calculation of confinement time served
3 by the offender before sentencing appears on the judgment and
4 sentence. The department must adjust an offender's rate of early
5 release listed on the jail certification to be consistent with the
6 rate applicable to offenders in the department's facilities. However,
7 the department is not authorized to adjust the number of presentence
8 early release days that the jail has certified as lost or not earned.

9 (2) An offender who has been convicted of a felony committed
10 after July 23, 1995, that involves any applicable deadly weapon
11 enhancements under RCW 9.94A.533 (3) or (4), or both, shall not
12 receive any good time credits or earned release time for that portion
13 of his or her sentence that results from any deadly weapon
14 enhancements.

15 (3) An offender may earn early release time as follows:

16 (a) In the case of an offender sentenced pursuant to RCW
17 10.95.030(3) or 10.95.035, the offender may not receive any earned
18 early release time during the minimum term of confinement imposed by
19 the court; for any remaining portion of the sentence served by the
20 offender, the aggregate earned release time may not exceed ten
21 percent of the sentence.

22 (b) In the case of an offender convicted of a serious violent
23 offense, or a sex offense that is a class A felony, committed on or
24 after July 1, 1990, and before July 1, 2003, the aggregate earned
25 release time may not exceed fifteen percent of the sentence.

26 (c) In the case of an offender convicted of a serious violent
27 offense, or a sex offense that is a class A felony, committed on or
28 after July 1, 2003, the aggregate earned release time may not exceed
29 ten percent of the sentence.

30 (d) An offender is qualified to earn up to fifty percent of
31 aggregate earned release time if he or she:

32 (i) Is not classified as an offender who is at a high risk to
33 reoffend as provided in subsection (4) of this section;

34 (ii) Is not confined pursuant to a sentence for:

35 (A) A sex offense;

36 (B) A violent offense;

37 (C) A crime against persons as defined in RCW 9.94A.411;

38 (D) A felony that is domestic violence as defined in RCW
39 10.99.020;

40 (E) A violation of RCW 9A.52.025 (residential burglary);

1 (F) A violation of, or an attempt, solicitation, or conspiracy to
2 violate, RCW 69.50.401 by manufacture or delivery or possession with
3 intent to deliver methamphetamine; or

4 (G) A violation of, or an attempt, solicitation, or conspiracy to
5 violate, RCW 69.50.406 (delivery of a controlled substance to a
6 minor);

7 (iii) Has no prior conviction for the offenses listed in (d)(ii)
8 of this subsection;

9 (iv) Participates in programming or activities as directed by the
10 offender's individual reentry plan as provided under RCW 72.09.270 to
11 the extent that such programming or activities are made available by
12 the department; and

13 (v) Has not committed a new felony after July 22, 2007, while
14 under community custody.

15 (e) In no other case shall the aggregate earned release time
16 exceed one-third of the total sentence.

17 (4) The department shall perform a risk assessment of each
18 offender who may qualify for earned early release under subsection
19 (3)(d) of this section utilizing the risk assessment tool recommended
20 by the Washington state institute for public policy. Subsection
21 (3)(d) of this section does not apply to offenders convicted after
22 July 1, 2010.

23 (5)(a) A person who is eligible for earned early release as
24 provided in this section and who will be supervised by the department
25 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to
26 community custody in lieu of earned release time;

27 (b) The department shall, as a part of its program for release to
28 the community in lieu of earned release, require the offender to
29 propose a release plan that includes an approved residence and living
30 arrangement. All offenders with community custody terms eligible for
31 release to community custody in lieu of earned release shall provide
32 an approved residence and living arrangement prior to release to the
33 community;

34 (c) The department may deny transfer to community custody in lieu
35 of earned release time if the department determines an offender's
36 release plan, including proposed residence location and living
37 arrangements, may violate the conditions of the sentence or
38 conditions of supervision, place the offender at risk to violate the
39 conditions of the sentence, place the offender at risk to reoffend,
40 or present a risk to victim safety or community safety. The

1 department's authority under this section is independent of any
2 court-ordered condition of sentence or statutory provision regarding
3 conditions for community custody;

4 (d) If the department is unable to approve the offender's release
5 plan, the department may do one or more of the following:

6 (i) Transfer an offender to partial confinement in lieu of earned
7 early release for a period not to exceed three months. The three
8 months in partial confinement is in addition to that portion of the
9 offender's term of confinement that may be served in partial
10 confinement as provided in RCW 9.94A.728(~~(5)~~) (1)(e);

11 (ii) Provide rental vouchers to the offender for a period not to
12 exceed three months if rental assistance will result in an approved
13 release plan;

14 (iii) Subject to the availability of amounts appropriated for
15 this specific purpose, and if rental assistance will result in an
16 approved release plan for the offender, the department may extend the
17 rental voucher period to a length not to exceed six months in total.

18 A voucher must be provided in conjunction with additional
19 transition support programming or services that enable an offender to
20 participate in services including, but not limited to, substance
21 abuse treatment, mental health treatment, sex offender treatment,
22 educational programming, or employment programming;

23 (e) The department shall maintain a list of housing providers
24 that meets the requirements of RCW 72.09.285. If more than two
25 voucher recipients will be residing per dwelling unit, as defined in
26 RCW 59.18.030, rental vouchers for those recipients may only be paid
27 to a housing provider on the department's list;

28 (f) For each offender who is the recipient of a rental voucher,
29 the department shall gather data as recommended by the Washington
30 state institute for public policy in order to best demonstrate
31 whether rental vouchers are effective in reducing recidivism.

32 (6) An offender serving a term of confinement imposed under RCW
33 9.94A.670(5)(a) is not eligible for earned release credits under this
34 section.

35 NEW SECTION. **Sec. 4.** The legislature declares that the
36 department of corrections' recalculations of community custody terms
37 pursuant to sections 1 and 2 of this act do not create any
38 expectations that a particular community custody term will end before
39 July 1, 2019, and offenders have no reason to conclude that the

1 recalculation of their community custody terms before July 1, 2019,
2 is an entitlement or creates any liberty interest in their community
3 custody term ending before July 1, 2019. The department of
4 corrections is authorized to take the time reasonably necessary to
5 complete the recalculations of community custody terms after the
6 effective date of this section.

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

10 NEW SECTION. **Sec. 6.** Sections 1 and 2 of this act apply
11 retroactively and prospectively regardless of the date of an
12 offender's underlying offense.

13 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of
15 the state government and its existing public institutions, and takes
16 effect July 1, 2019."

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By Senator Darneille

NOT CONSIDERED 12/23/2019

17 On page 1, line 2 of the title, after "jurisdiction;" strike the
18 remainder of the title and insert "amending RCW 9.94A.589, 9.94B.050,
19 and 9.94A.729; creating new sections; providing an effective date;
20 and declaring an emergency."

EFFECT: (1) Removes all language regarding the review of
sentencing documents, and making motions for relief from sentencing,
for individuals who committed a drug offense prior to July 1, 2004.

(2) Removes all language that increased the percentage of earned
release time that incarcerated individuals could earn.

(3) Removes all changes to the department's swift and certain
policy.

(4) Adds language that, subject to appropriated funds, the
department may extend the voucher period to a maximum of six months
when deemed necessary.

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