

SENATE BILL REPORT

SB 5848

As Reported by Senate Committee On:
Human Services, Reentry & Rehabilitation, February 20, 2019

Title: An act relating to individuals under the department of corrections' jurisdiction.

Brief Description: Concerning individuals under the department of corrections' jurisdiction.

Sponsors: Senators Darneille and Nguyen; by request of Department of Corrections.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 2/14/19, 2/20/19 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Requires multiple terms of community custody run concurrent, unless the courts expressly order terms be served consecutively, regardless of how the term of confinement is ordered.
- Allows sanctions for low-level violations to be non-confinement sanctions when appropriate, or not more than three days in custody.
- Removes requirements for 30 days of sanction time for underlying 21 designation cases.
- Changes the allowable amount of earned time on a sentence from a maximum of 33 percent to a maximum of 50 percent, if the offense was not classified as a violent, sex, or crime against a person offense.
- Adds an entitlement to a resentencing hearing for offenders who were sentenced for a drug offense committed prior to July 1, 2004, and are currently serving a term of incarceration for that drug offense.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 5848 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Cleveland, Wilson, C. and Zeiger.

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.

Minority Report: That it be referred without recommendation.

Signed by Senators Walsh, Ranking Member; O'Ban.

Staff: Keri Waterland (786-7490)

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. The presence of multiple offenses affects the offender score, which then lengthens the base sentences for both offenses. There are exceptions to the requirement for concurrent sentences in exceptional circumstances. For example, sentences must run consecutively if the offender committed 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 custody, the aggregate of the community custody 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). 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.

Earned Release Time. Some offenders are eligible for earned early release for good behavior and good performance. The amount of the sentence eligible for earned early release varies depending on the circumstances of the offender's underlying offense and date of conviction.

Earned early release is limited to 10 percent for class A felony sex offenses and serious violent offenses, and 33 percent for other offenses. Many sentences are currently not eligible for earned early release, including portions of sentences for mandatory firearm or deadly weapon enhancements.

Swift and Certain. DOC implemented the swift and certain (SAC) policy in May of 2012. SAC was established to reduce confinement time for sanctions following a violation of supervision conditions. While maintaining a substantial focus on public safety, the Washington SAC program sought to reduce correctional costs associated with short-term confinement for violation sanctioning.

Underlying 21 Designation. If the offender's underlying offense is one of the following felonies—known as the underlying 21 designation or U21—and the violation behavior constitutes a new misdemeanor, gross misdemeanor, or felony, the offender shall be held in total confinement pending a sanction hearing, and until the sanction expires—for up to 30 days—or until a prosecuting attorney files new charges against the offender, whichever occurs first:

- assault in the first degree;
- assault of a child in the first degree;
- assault of a child in the second degree;
- burglary in the first degree;
- child molestation in the first degree;
- commercial sexual abuse of a minor;
- dealing in depictions of a minor engaged in sexually explicit conduct;
- homicide by abuse;
- indecent liberties with forcible compulsion;
- indecent liberties with a person capable of consent;
- kidnapping in the first degree;
- murder in the first degree;
- murder in the second degree;
- promoting commercial sexual abuse of a minor;
- rape in the first degree;
- rape in the second degree;
- rape of a child in the first degree;
- rape of a child in the second degree;
- robbery in the first degree;
- sexual exploitation of a minor; or
- vehicular homicide while under the influence of intoxicating liquor or any drug.

Summary of Bill (First Substitute): The terms of community custody shall run concurrently to each other unless the court expressly orders community custody run consecutively. An individual who is currently in confinement and is subsequently sentenced for another felony shall serve their confinement terms consecutively. 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.

Individuals convicted on or after July 1, 2019, may not exceed 50 percent aggregate earned release time of the sentence, when the conviction is for an offense that is not classified as a sex offense, violent offense, or crime against a person.

DOC may sanction an offender who commits a low level violation by giving them one or more nonconfinement sanctions, or not more than three days in total confinement.

DOC's recalculations of community custody terms do not create any expectations a particular community custody term will end before July 1, 2019, 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, 2019. DOC is authorized to take the time reasonably necessary to complete the recalculations of community custody terms after the effective date of this section.

DOC must apply this act retroactively and prospectively, regardless of an offender's underlying offense date.

The changes to the maximum percentages of earned release time do not create any expectation the percentage of earned release time cannot be revised, and offenders have no reason to conclude the maximum percentage of earned release time is an entitlement or creates any liberty interest. The Legislature retains full control over the right to revise the percentages of earned release time available to offenders at any time.

Individuals who were sentenced for a drug offense committed prior to July 1, 2004, and are currently serving a term of incarceration for that drug offense are entitled to a resentencing hearing. In no case may the resentencing under result in the offender serving a greater term of total confinement. The prosecuting attorney for the county in which any offender was sentenced must review the sentencing documents and shall, make a motion for relief from sentence to the original sentencing court. The offender may make a motion for relief from sentence to the original sentencing court as well. The sentencing court shall grant the motion if it finds that the offender is serving a sentence for a drug offense committed prior to July 1, 2004, and shall immediately set an expedited date for resentencing.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):

- Adds an entitlement to a resentencing hearing for offenders who were sentenced for a drug offense committed prior to July 1, 2004, and are currently serving a term of incarceration for that drug offense.
- Adds processes for offenders, attorneys, and the sentencing court specific to motions for resentencing.
- Adds language that in no case may the resentencing under this order result in the offender serving a greater term of total confinement.
- The additional section expires on July 1, 2021.

Appropriation: None.

Fiscal Note: Requested on February 6, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2019.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Assists DOC in addressing capacity issues, reduces complexity of multiple community supervision terms, and streamlines the violation process. DOC is currently at 103 percent and 109 percent capacity for male to female respectively, and we currently have 44 and 28 males and females sleeping on the floor respectively. This impacts safety and security. Changes are prospective only in this bill for the earned release time going to 50 percent. This will have a positive impact on capacity. Between 2003 and 2010 DOC had the authority to do 50 percent good time, and WSIPP concluded that this led to a return on investment of \$1.86 for every \$1.00 spent. There is unnecessary complexity for the staff, and this makes this streamlined. DOSA is an example of this complexity and streamlining; prior to a supervision term starting, DOC cannot sanction on if the person not serving the community custody sentence, so DOSA offenders cannot be sanctioned sometimes if they are not on supervisions because the sentence for community custody is consecutive. The initial period of transition is a high risk time and this is a better use of funds to focus on. Swift and certain changes in this bill improve the process of those who commit violations of community custody. Based on current law, counting rules apply regardless of the actual violation, and removing the count allows for sanctions to be tailored to the individual and be based on risk versus just confining someone. Research and presentations shows that the first 12 months of community supervision is the most critical and if support is given.

CON: We tend to see these bills when there is a budget deficit. The overcrowding is not unexpected. We do not see these changes as advantageous to public safety. The 50 percent good time is a reduction to a felony sanction by half and we do not think this number is based on science, and do not support this. We are not aware of science where there is a definitive point where it is determined to not be cost effective to supervise. The legislative changes should be based on public safety, not on financial considerations. This legislation would result in the loss of approximately 70 FTE's, and the stated purpose of DOC could be achieved without this bill. This is not for public safety. If multiple terms will run concurrently, then what is the ability to deter criminal behavior if there is no consecutive community custody? This creates a staff safety concern. The bill is not evidence based and it undermines the principles of community custody.

Persons Testifying: PRO: Senator Jeannie Darneille, Prime Sponsor; Alex MacBain, Department of Corrections; Mac Pevey, Assistant Secretary Community Corrections Division, DOC; Keri-Anne Jetzer, Sentencing Guidelines Commission.

CON: Judy Kuschel, Washington Federation of State Employees; Paul Okerman, Washington Federation of State Employees; James McMahan, Washington Association Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys.

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