

SENATE BILL REPORT

SB 6370

As Passed Senate, February 12, 2020

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

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

Sponsors: Senators Nguyen, Padden, Dhingra, Darneille, Stanford, Das, Lovelett and Wilson, C.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/30/20, 2/04/20 [DP].

Floor Activity:

Passed Senate: 2/12/20, 46-1.

Brief Summary of Bill

- Requires multiple terms of community custody be run concurrently, unless the courts expressly order terms be served consecutively, regardless of how the term of confinement is ordered.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: Do pass.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, O'Ban, Wilson, C. and Zeiger.

Staff: Kelsey-anne Fung (786-7479)

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.

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.

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.

Department of Corrections Proposal. In 2019, DOC proposed changes to concurrent community supervision to the Sentencing Guidelines Commission and the Washington Criminal Sentencing Task Force. According to DOC, current statutes lack clarity on the relationship between a current term of community custody and prior unfinished terms as to whether they should be served concurrently or consecutively. Different counties have different practices on how the relationships between multiple terms of community custody are reflected on the judgment and sentence form. This creates complexity for DOC records and community corrections staff and discrepancies in entering sentences into DOC's database.

DOC proposed the following changes to clarify the presumption of community custody to be concurrent for both instances in which terms of community custody can exist:

- Between multiple current counts contained in one sentencing; and
- When individuals have a current term of community custody ordered who also still have a term of community custody from a prior, unfinished term.

DOC's proposal would allow the courts discretion to expressly order terms be served consecutively. The proposal also included a provision related to sentences that were imposed

prior to the effective date of this bill that gives clear direction to DOC to set the relationship between multiple causes or sentences as concurrent, unless the court ordered otherwise.

Summary of Bill: The terms of community custody shall run concurrently to each other unless the court expressly orders it to 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.

DOC's recalculations of community custody terms do not create any expectations a particular community custody term will end before June 1, 2020, 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 June 1, 2020. DOC is authorized to take the time reasonably necessary to complete the recalculations of community custody terms after the effective date.

The changes apply retroactively and prospectively regardless of the date of an offender's underlying offense.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and takes effect on June 1, 2020.

Staff Summary of Public Testimony: PRO: This was DOC request legislation that was approved by Sentencing Guidelines Commission. The bill aims to mitigate ambiguity in how sentencing should be treated. Existing judicial discretion is still intact but makes the presumption that the terms would run concurrently, unless ordered otherwise. This is especially important in scenarios when it is not clearly stated in the sentencing form.

Current statute lacks clarity on relationship between a current term of community supervision and prior unfinished terms as to whether they should be served concurrently or consecutively. Different counties have different ways to demonstrate relationship on judgment and sentencing forms. Most are silent, some have standard instructions, and some are handwritten. Lack of clarity in statute and on forms creates added complexities and confusion for staff and the potential for sentences to be served differently than the court intended.

CON: The best way to address this confusion and lack of clarity is to adopt a standard judgement and sentencing form that has information that every court must complete before sending it to DOC. True concern is not necessarily the policy but the fiscal impact. The \$24 million in savings in the fiscal note is great for the state but there are public safety

implications with reducing so many full-time employees who supervise individuals on community custody. The level of supervision is not what expect to see in field because the supervision staff are already overloaded. There is a legitimate issue here, but this is not the best way to solve it.

Persons Testifying: PRO: Senator Joe Nguyen, Prime Sponsor; Keri-Anne Jetzer, Sentencing Guidelines Commission; Mac Pevey, Assistant Secretary–Community Corrections, Department of Corrections; Sarah Lewis, Community Corrections Officer, Department of Corrections; Lillian Wilbur, Community Corrections Officer, Department of Corrections.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

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