

---

**HOUSE BILL 2394**

---

**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Representatives Klippert, Goodman, Davis, Ormsby, and Appleton

Prefiled 01/10/20. Read first time 01/13/20. Referred to Committee on Public Safety.

1 AN ACT Relating to community custody; amending RCW 9.94A.589 and  
2 9.94B.050; creating new sections; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

1 (b) Whenever a person is convicted of two or more serious violent  
2 offenses arising from separate and distinct criminal conduct, the  
3 standard sentence range for the offense with the highest seriousness  
4 level under RCW 9.94A.515 shall be determined using the offender's  
5 prior convictions and other current convictions that are not serious  
6 violent offenses in the offender score and the standard sentence  
7 range for other serious violent offenses shall be determined by using  
8 an offender score of zero. The standard sentence range for any  
9 offenses that are not serious violent offenses shall be determined  
10 according to (a) of this subsection. All sentences imposed under this  
11 subsection (1)(b) shall be served consecutively to each other and  
12 concurrently with sentences imposed under (a) of this subsection.  
13 However, unless the court expressly orders that the community custody  
14 terms run consecutively to each other, such terms shall run  
15 concurrently to each other even if the court orders the confinement  
16 terms to run consecutively to each other.

17 (c) If an offender is convicted under RCW 9.41.040 for unlawful  
18 possession of a firearm in the first or second degree and for the  
19 felony crimes of theft of a firearm or possession of a stolen  
20 firearm, or both, the standard sentence range for each of these  
21 current offenses shall be determined by using all other current and  
22 prior convictions, except other current convictions for the felony  
23 crimes listed in this subsection (1)(c), as if they were prior  
24 convictions. The offender shall serve consecutive sentences for each  
25 conviction of the felony crimes listed in this subsection (1)(c), and  
26 for each firearm unlawfully possessed.

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

30 (2) (a) (~~Except as provided in (b) of this subsection, whenever~~)  
31 Whenever a person while under sentence for conviction of a felony  
32 commits another felony and is sentenced to another term of  
33 confinement, the latter term of confinement shall not begin until  
34 expiration of all prior terms of confinement. However, any terms of  
35 community custody shall run concurrently to each other, unless the  
36 court pronouncing the current sentence expressly orders that they be  
37 served consecutively.

38 (b) Whenever a second or later felony conviction results in  
39 consecutive community (~~supervision~~) custody with conditions not  
40 currently in effect, under the prior sentence or sentences of

1 community (~~supervision~~) custody, the court may require that the  
2 conditions of community (~~supervision~~) custody contained in the  
3 second or later sentence begin during the immediate term of community  
4 (~~supervision~~) custody and continue throughout the duration of the  
5 consecutive term of community (~~supervision~~) custody.

6 (3) Subject to subsections (1) and (2) of this section, whenever  
7 a person is sentenced for a felony that was committed while the  
8 person was not under sentence for conviction of a felony, the  
9 sentence shall run concurrently with any felony sentence which has  
10 been imposed by any court in this or another state or by a federal  
11 court subsequent to the commission of the crime being sentenced  
12 unless the court pronouncing the current sentence expressly orders  
13 that (~~they~~) the confinement terms be served consecutively to each  
14 other. Unless the court expressly orders that the community custody  
15 terms run consecutively, such terms run concurrently to each other  
16 even if the court orders the confinement terms to run consecutively  
17 to each other.

18 (4) Whenever any person granted probation under RCW 9.95.210 or  
19 9.92.060, or both, has the probationary sentence revoked and a prison  
20 sentence imposed, that sentence shall run consecutively to any  
21 sentence imposed pursuant to this chapter, unless the court  
22 pronouncing the subsequent sentence expressly orders that they be  
23 served concurrently.

24 (5) (~~In the case of consecutive sentences, all~~) All periods of  
25 total confinement shall be served before any partial confinement,  
26 community (~~restitution, community supervision~~) custody, or any  
27 other requirement or conditions of any of the sentences. (~~Except for~~  
28 ~~exceptional sentences as authorized under RCW 9.94A.535, if two or~~  
29 ~~more sentences that run consecutively include periods of community~~  
30 ~~supervision, the aggregate of the community supervision period shall~~  
31 ~~not exceed twenty-four months.~~)

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

34 When a court sentences an offender to a term of total confinement  
35 in the custody of the department for any of the offenses specified in  
36 this section, the court shall also sentence the offender to a term of  
37 community placement as provided in this section. Except as provided  
38 in RCW 9.94A.501, the department shall supervise any sentence of  
39 community placement imposed under this section.

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

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

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

7 (i) Assault in the second degree;

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

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

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

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

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

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

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

25 (3) The community placement ordered under this section shall  
26 begin either upon completion of the term of confinement or at such  
27 time as the offender is transferred to community custody in lieu of  
28 earned release. When the court sentences an offender to the statutory  
29 maximum sentence then the community placement portion of the sentence  
30 shall consist entirely of the community custody to which the offender  
31 may become eligible. Any period of community custody actually served  
32 shall be credited against the community placement portion of the  
33 sentence. The community placement shall run concurrently to any  
34 period of probation, parole, community supervision, community  
35 placement, or community custody previously imposed by any court in  
36 any jurisdiction, unless the court pronouncing the current sentence  
37 expressly orders that they be served consecutively to each other.

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

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

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

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

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

9 (e) The residence location and living arrangements shall be  
10 subject to the prior approval of the department during the period of  
11 community placement.

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

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

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

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

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

22 (e) The offender shall comply with any crime-related  
23 prohibitions.

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

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

32 NEW SECTION. **Sec. 3.** The department of corrections must  
33 recalculate the scheduled end dates for terms of community custody,  
34 community supervision, and community placement so that they run  
35 concurrently to previously imposed sentences of community custody,  
36 community supervision, community placement, probation, and parole,  
37 unless the court pronouncing the current sentence has expressly  
38 required such terms to run consecutively. This section applies to  
39 each offender currently in confinement or under active supervision,

1 regardless of whether the offender is sentenced after the effective  
2 date of this section and regardless of whether the offender's date of  
3 offense occurred prior to the effective date of this section or  
4 after.

5 NEW SECTION. **Sec. 4.** The legislature declares that the  
6 department of corrections' recalculations of community custody terms  
7 pursuant to this act do not create any expectations that a particular  
8 community custody term will end before July 1, 2020, and offenders  
9 have no reason to conclude that the recalculation of their community  
10 custody terms before July 1, 2020, is an entitlement or creates any  
11 liberty interest in their community custody term ending before July  
12 1, 2020.

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

16 NEW SECTION. **Sec. 6.** This act applies retroactively and  
17 prospectively, regardless of the date of an offender's underlying  
18 offense.

--- END ---