

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2394

66th Legislature
2020 Regular Session

Passed by the House March 9, 2020
Yeas 93 Nays 3

**Speaker of the House of
Representatives**

Passed by the Senate March 4, 2020
Yeas 47 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2394** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2394

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

State of Washington **66th Legislature** **2020 Regular Session**

By House Public Safety (originally sponsored by Representatives Klippert, Goodman, Davis, Ormsby, and Appleton)

READ FIRST TIME 02/03/20.

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 Even if the court orders the confinement terms to run consecutively
14 to each other, the terms of community custody shall run concurrently
15 to each other, unless the court expressly orders the community
16 custody 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. Even if the court orders the confinement terms to run
15 consecutively to each other, the terms of community custody shall run
16 concurrently to each other, unless the court expressly orders the
17 community custody terms to run consecutively 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 periods of total
25 confinement shall be served before any partial confinement, community
26 restitution, community supervision, or any other requirement or
27 conditions of any of the sentences. Except for exceptional sentences
28 as authorized under RCW 9.94A.535, if two or more sentences that run
29 consecutively include periods of community supervision, the aggregate
30 of the community supervision period shall not exceed twenty-four
31 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.

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