



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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DATE: June 10, 2009  
FROM: Shannon Hinchcliffe, Sentencing Guidelines Commission (SGC) Staff  
TO: Sentencing Guidelines Commission Members  
SUBJECT: **SUMMARY OF COMMUNITY CUSTODY CHANGES AS A RESULT OF ESSB 5288 AND SSB 6162.**

I previously provided a summary of community custody changes for members prior to the Governor's veto. Below is an updated version of the original table.

Determination for Community Custody Ranges prior to ESSB 5288/SSB 6162	Determination for Community Custody Terms Now	Summary of the Changes
<p>Sentencing Guidelines Commission had the duty to set community custody ranges. Ranges were as follows (in months):</p> <ul style="list-style-type: none"><li>• Sex Offenses 36-48</li><li>• Serious Violent Offenses 24-48</li><li>• Violent Offenses 18-36</li><li>• Crimes Against a Person 9-18</li><li>• Drug Offenses: 9-12</li></ul>	<p>Community custody terms are now set out in RCW 9.94A.501. Terms are as follows:</p> <ul style="list-style-type: none"><li>• Sex offenses 36 months</li><li>• Serious Violent Offenses 36 months</li><li>• Violent Offenses 18 months</li><li>• Crimes Against A Person 12 months</li><li>• Drug Offenses 12 months</li></ul>	<ul style="list-style-type: none"><li>• SGC has been relieved of its duty to set ranges.</li><li>• Ranges have been converted to terms.</li><li>• Removes DOC's authority to alter the duration of the offender's community custody based on risk and performance of the offender.</li><li>• Non prison offenders have no change on supervision length, they will be supervised for 12 months, if eligible.</li><li>• These community custody terms are to be applied retrospectively and prospectively, DOC will have to recalculate all community custody terms.</li></ul>

<sup>1</sup> SHB 1791 allows the court to add a community custody term in addition to more than one year of confinement when a sentencing range has not been established for the current offense and the court finds reasons to justify an exceptional sentence under RCW 9.94A.535.

Current Community Custody Practices	As of July 26, 2009 or Effective 2009-08-01 with Superior Act	Summary of the Changes
<p>Any felony offender sentenced to community custody and any misdemeanor or gross misdemeanor offender sentenced to probation in Superior Court whose:</p> <ul style="list-style-type: none"> <li>• Risk assessment places the offender in one of two highest categories or</li> <li>• Regardless of risk, they have a conviction for:               <ul style="list-style-type: none"> <li>○ Sex offense;</li> <li>○ Violent offense;</li> <li>○ Crime against persons;</li> <li>○ Felony that is domestic violence;</li> <li>○ Residential burglary;</li> <li>○ Manufacture, delivery, or possession of Methamphetamine; or</li> <li>○ Delivery of a controlled substance to a minor;</li> <li>○ Offender has a prior conviction for any of the above.</li> <li>○ Conditions of supervision include chemical dependency treatment</li> <li>○ Offender was sentenced to a First Time Offender Waiver (FTOW) or Special Sex Offender Sentencing Alternative (SSOSA);</li> <li>○ Or supervision is required by Interstate Compact or Adult Offender Supervision.</li> </ul> </li> </ul> <p>Offenders who are given earned early release time (community custody in lieu of confinement) up to the statutory maximum, pursuant to RCW 9.94A.728(2).</p>	<p>Every felony offender whose risk assessment places the offender in the two highest risk categories from July 26, 2009 until August 1, 2009 and then the highest category after August 1, 2009<sup>3</sup> or regardless of risk if they:</p> <ul style="list-style-type: none"> <li>• Have a current conviction for a sex offense or serious violent offense;</li> <li>• Are a dangerous mentally ill offender pursuant to RCW 72.09.370;</li> <li>• Have an indeterminate sentence and are subject to parole;</li> <li>• Offender was sentenced to a First Time Offender Waiver (FTOW) or Special Sex Offender Sentencing Alternative (SSOSA) or Drug Offender Sentencing Alternative (DOSA);</li> <li>• Or supervision is required by Interstate Compact or Adult Offender Supervision.</li> </ul> <p>Misdemeanant and gross misdemeanor offenders who are sentenced to probation in Superior Court for the following convictions:</p> <ul style="list-style-type: none"> <li>• Sexual Misconduct with a Minor 2<sup>nd</sup> Degree; or</li> <li>• Custodial Sexual Misconduct with a Minor 2<sup>nd</sup> Degree; or</li> <li>• Communication with a Minor for Immoral Purposes; or</li> <li>• Failure to Register as a Sex or Kidnapping Offender or</li> <li>• Assault 4<sup>th</sup> Degree or Violation of a Protection Order (VPO) if they have one or more convictions for the following:               <ul style="list-style-type: none"> <li>• Violent offense;</li> <li>• Sex offense;</li> <li>• Crime against persons;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Removes supervision of low to moderate risk offenders of:               <ul style="list-style-type: none"> <li>• violent offenses,</li> <li>• crimes against persons,</li> <li>• felony domestic violence,</li> <li>• residential burglary,</li> <li>• convictions pursuant to RCW 69.50 and 69.52 and</li> <li>• those ordered to chemical dependency treatment (changes to offenders with DOSAs see note below.)</li> </ul> </li> <li>• Clarifies DOSA offenders to offenders who are supervised regardless of risk. (This is not a substantive change, this type of offender was included previously under those who had "conditions of supervision including dependency treatment.)</li> <li>• Removes the "highest risk" filter for misdemeanants and gross misdemeanants and replaces it with strictly offense-based criteria.</li> <li>• Adds gross misdemeanor and misdemeanants who commit Assault Fourth Degree and Violation of a Protection Order (with certain prior offenses) to offenders who are supervised regardless of risk.</li> <li>• The term of community custody shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.</li> </ul>

<sup>2</sup> The Governor vetoed section 18 of ESSB 5288 which contained the specific effective dates of the respective sections. In effect, it makes all parts of the Act effective 90 days after the adjournment of the session, July 26, 2009 (See *Hallin v. Greco*, 94 Wash.2d 671, 676; Wa. St. Const. Art. II Sec. 41.)

<sup>3</sup> This change is reflective of the use of the risk-assessment tool approved by WSIPP. ESSB 5288.

	<ul style="list-style-type: none"><li>• Fourth Degree Assault;</li><li>• VPO</li></ul> <p>Offenders who are given earned early release time (community custody in lieu of confinement) up to the statutory maximum, pursuant to Laws of 2009, ch. 455, § 3 (effective May 11, 2009.)</p>	<ul style="list-style-type: none"><li>• Removes the July 1, 2010 sunset clause from community custody (RCW 9.94A.501).</li><li>• No change in DOC supervising offenders who are given earned early release.</li></ul>
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