S-3185.1

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**SENATE BILL 5684**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators McCune, Gildon, and Wagoner

AN ACT Relating to extraordinary medical placement for individuals at the department of corrections with terminal illnesses; reenacting and amending RCW 9.94A.728; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature recognizes the importance of spending one's final moments around those closest to him or her. As such, the legislature intends to clarify the criteria for which the secretary of the Washington state department of corrections may grant a conditional emergency medical placement to explicitly include offenders diagnosed with a terminal illness, specifically blood cancer and cancer impacting internal organs. The legislature recognizes that as innovation in cancer treatment progresses, certain cancers, such as nonmelanoma skin cancer, are not terminal and should not be considered terminal by the secretary. The legislature intends to clarify eligibility for emergency medical placement with the goal of permitting offenders with terminal illnesses the ability to pass away surrounded by those who love them.

**Sec.**  RCW 9.94A.728 and 2021 c 311 s 19 and 2021 c 266 s 2 are each reenacted and amended to read as follows:

(1) No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(a) An offender may earn early release time as authorized by RCW 9.94A.729;

(b) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(c)(i) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(A) The offender has a medical condition that is serious and is expected to require costly care or treatment;

(B) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(C) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(ii) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(iii) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(iv) The secretary may revoke an extraordinary medical placement under this subsection (1)(c) at any time.

(v) Persistent offenders are not eligible for extraordinary medical placement;

(d) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(e) No more than the final twelve months of the offender's term of confinement may be served in partial confinement for aiding the offender with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

(f)(i) No more than the final five months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733(1)(a);

(ii) For eligible offenders under RCW 9.94A.733(1)(b), after serving at least four months in total confinement in a state correctional facility, an offender may serve no more than the final 18 months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department;

(g) The governor may pardon any offender;

(h) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

(i) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870;

(j) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540; ((~~and~~))

(k) Any person convicted of one or more crimes committed prior to the person's eighteenth birthday may be released from confinement pursuant to RCW 9.94A.730; and

(l)(i) The secretary may authorize an extraordinary terminal medical placement for an offender when all of the following conditions exist:

(A) The offender has a medical condition that is terminal and is expected to require costly care or treatment;

(B) The offender poses a low risk to the community because he or she is currently physically incapacitated due to a terminal medical condition or is expected to be so at the time of release; and

(C) It is expected that granting the extraordinary terminal medical placement will result in a cost savings to the state.

(ii) An offender convicted of any of the following crimes is not eligible for an extraordinary terminal medical placement:

(A) First degree murder;

(B) Second degree murder;

(C) Rape in the first degree;

(D) Rape in the second degree;

(E) Rape of a child in the first degree; and

(F) Rape of a child in the second degree.

(iii) The secretary shall require electronic monitoring for all offenders in extraordinary terminal medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(iv) The secretary may revoke an extraordinary terminal medical placement under this subsection (1)(l) at any time.

(v) For the purposes of this subsection, "terminal" means a medical prognosis of death within two years. Cancer diagnoses of the blood or internal organs shall be presumed terminal. Terminal does not include nonmelanoma skin cancer diagnoses.

(2) Notwithstanding any other provision of this section, an offender entitled to vacation of a conviction or the recalculation of his or her offender score pursuant to *State v. Blake*, No. 96873-0 (Feb. 25, 2021), may be released from confinement pursuant to a court order if the offender has already served a period of confinement that exceeds his or her new standard range. This provision does not create an independent right to release from confinement prior to resentencing.

(3) Offenders residing in a juvenile correctional facility placement pursuant to RCW 72.01.410(1)(a) are not subject to the limitations in this section.

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