

HB 1789 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 04/07/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.94A.728 and 2008 c 231 s 34 are each amended to
4 read as follows:

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

9 (1) Except as otherwise provided for in subsection (2) of this
10 section, the term of the sentence of an offender committed to a
11 correctional facility operated by the department may be reduced by
12 earned release time in accordance with procedures that shall be
13 developed and promulgated by the correctional agency having
14 jurisdiction in which the offender is confined. The earned release
15 time shall be for good behavior and good performance, as determined by
16 the correctional agency having jurisdiction. The correctional agency
17 shall not credit the offender with earned release credits in advance of
18 the offender actually earning the credits. Any program established
19 pursuant to this section shall allow an offender to earn early release
20 credits for presentence incarceration. If an offender is transferred
21 from a county jail to the department, the administrator of a county
22 jail facility shall certify to the department the amount of time spent
23 in custody at the facility and the amount of earned release time. The
24 department may approve a jail certification from a correctional agency
25 that calculates earned release time based on the actual amount of
26 confinement time served by the offender before sentencing when an
27 erroneous calculation of confinement time served by the offender before
28 sentencing appears on the judgment and sentence. An offender who has
29 been convicted of a felony committed after July 23, 1995, that involves
30 any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or

1 (4), or both, shall not receive any good time credits or earned release
2 time for that portion of his or her sentence that results from any
3 deadly weapon enhancements.

4 (a) In the case of an offender convicted of a serious violent
5 offense, or a sex offense that is a class A felony, committed on or
6 after July 1, 1990, and before July 1, 2003, the aggregate earned
7 release time may not exceed fifteen percent of the sentence. In the
8 case of an offender convicted of a serious violent offense, or a sex
9 offense that is a class A felony, committed on or after July 1, 2003,
10 the aggregate earned release time may not exceed ten percent of the
11 sentence.

12 (b)(i) In the case of an offender who qualifies under (b)(ii) of
13 this subsection, the aggregate earned release time may not exceed fifty
14 percent of the sentence.

15 (ii) An offender is qualified to earn up to fifty percent of
16 aggregate earned release time under this subsection (1)(b) if he or
17 she:

18 (A) Is classified in one of the two lowest risk categories under
19 (b)(iii) of this subsection;

20 (B) Is not confined pursuant to a sentence for:

21 (I) A sex offense;

22 (II) A violent offense;

23 (III) A crime against persons as defined in RCW 9.94A.411;

24 (IV) A felony that is domestic violence as defined in RCW
25 10.99.020;

26 (V) A violation of RCW 9A.52.025 (residential burglary);

27 (VI) A violation of, or an attempt, solicitation, or conspiracy to
28 violate, RCW 69.50.401 by manufacture or delivery or possession with
29 intent to deliver methamphetamine; or

30 (VII) A violation of, or an attempt, solicitation, or conspiracy to
31 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

32 (C) Has no prior conviction for:

33 (I) A sex offense;

34 (II) A violent offense;

35 (III) A crime against persons as defined in RCW 9.94A.411;

36 (IV) A felony that is domestic violence as defined in RCW
37 10.99.020;

38 (V) A violation of RCW 9A.52.025 (residential burglary);

1 (VI) A violation of, or an attempt, solicitation, or conspiracy to
2 violate, RCW 69.50.401 by manufacture or delivery or possession with
3 intent to deliver methamphetamine; or

4 (VII) A violation of, or an attempt, solicitation, or conspiracy to
5 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

6 (D) Participates in programming or activities as directed by the
7 offender's individual reentry plan as provided under RCW 72.09.270 to
8 the extent that such programming or activities are made available by
9 the department; and

10 (E) Has not committed a new felony after July 22, 2007, while under
11 community custody.

12 (iii) For purposes of determining an offender's eligibility under
13 this subsection (1)(b), the department shall perform a risk assessment
14 of every offender committed to a correctional facility operated by the
15 department who has no current or prior conviction for a sex offense, a
16 violent offense, a crime against persons as defined in RCW 9.94A.411,
17 a felony that is domestic violence as defined in RCW 10.99.020, a
18 violation of RCW 9A.52.025 (residential burglary), a violation of, or
19 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
20 manufacture or delivery or possession with intent to deliver
21 methamphetamine, or a violation of, or an attempt, solicitation, or
22 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
23 substance to a minor). The department must classify each assessed
24 offender in one of four risk categories between highest and lowest
25 risk.

26 (iv) The department shall recalculate the earned release time and
27 reschedule the expected release dates for each qualified offender under
28 this subsection (1)(b).

29 (v) This subsection (1)(b) applies retroactively to eligible
30 offenders serving terms of total confinement in a state correctional
31 facility as of July 1, 2003.

32 (vi) This subsection (1)(b) does not apply to offenders convicted
33 after July 1, 2010.

34 (c) In no other case shall the aggregate earned release time exceed
35 one-third of the total sentence;

36 (2)(a) A person convicted of a sex offense, a violent offense, any
37 crime against persons under RCW 9.94A.411(2), or a felony offense under
38 chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a

1 program developed by the department, for transfer to community custody
2 in lieu of earned release time pursuant to subsection (1) of this
3 section;

4 (b) The department shall, as a part of its program for release to
5 the community in lieu of earned release, require the offender to
6 propose a release plan that includes an approved residence and living
7 arrangement. All offenders with community custody terms eligible for
8 release to community custody in lieu of earned release shall provide an
9 approved residence and living arrangement prior to release to the
10 community;

11 (c) The department may deny transfer to community custody in lieu
12 of earned release time pursuant to subsection (1) of this section if
13 the department determines an offender's release plan, including
14 proposed residence location and living arrangements, may violate the
15 conditions of the sentence or conditions of supervision, place the
16 offender at risk to violate the conditions of the sentence, place the
17 offender at risk to reoffend, or present a risk to victim safety or
18 community safety. The department's authority under this section is
19 independent of any court-ordered condition of sentence or statutory
20 provision regarding conditions for community custody;

21 (d) If the department denies transfer to community custody in lieu
22 of earned early release pursuant to (c) of this subsection, the
23 department may transfer an offender to partial confinement in lieu of
24 earned early release up to three months. The three months in partial
25 confinement is in addition to that portion of the offender's term of
26 confinement that may be served in partial confinement as provided in
27 this section;

28 (e) An offender serving a term of confinement imposed under RCW
29 9.94A.670(5)(a) is not eligible for earned release credits under this
30 section;

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

35 (4)(a) The secretary may authorize an extraordinary medical
36 placement for an offender when all of the following conditions exist:

37 (i) The offender has a medical condition that is serious enough to
38 require costly care or treatment;

1 (ii) The offender poses a low risk to the community because he or
2 she is physically incapacitated due to age or the medical condition;
3 and

4 (iii) Granting the extraordinary medical placement will result in
5 a cost savings to the state.

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

9 (c) The secretary shall require electronic monitoring for all
10 offenders in extraordinary medical placement unless the electronic
11 monitoring equipment interferes with the function of the offender's
12 medical equipment or results in the loss of funding for the offender's
13 medical care. The secretary shall specify who shall provide the
14 monitoring services and the terms under which the monitoring shall be
15 performed.

16 (d) The secretary may revoke an extraordinary medical placement
17 under this subsection at any time;

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

22 (6) No more than the final six months of the offender's term of
23 confinement may be served in partial confinement designed to aid the
24 offender in finding work and reestablishing himself or herself in the
25 community. This is in addition to that period of earned early release
26 time that may be exchanged for partial confinement pursuant to
27 subsection (2)(d) of this section;

28 (7) The governor may pardon any offender;

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

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

35 (10) Notwithstanding any other provisions of this section, an
36 offender sentenced for a felony crime listed in RCW 9.94A.540 as
37 subject to a mandatory minimum sentence of total confinement shall not
38 be released from total confinement before the completion of the listed

1 mandatory minimum sentence for that felony crime of conviction unless
2 allowed under RCW 9.94A.540, however persistent offenders are not
3 eligible for extraordinary medical placement.

4 NEW SECTION. **Sec. 2.** This act takes effect August 1, 2009."

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5 On page 1, line 3 of the title, after "offenders;" strike the
6 remainder of the title and insert "amending RCW 9.94A.728; and
7 providing an effective date."

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