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HOUSE BILL 2016

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By Representatives Kagi, O'Brien, Upthegrove, Appleton, Nixon, Chase, Kenney, Roberts, Dickerson, McDonald, Wood and Darneille

Read first time 02/15/2005. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to partial confinement options for certain drug  
2 offenders; amending RCW 9.94A.030 and 9.94A.728; providing an effective  
3 date; and declaring an emergency.

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

5 **Sec. 1.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read  
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Board" means the indeterminate sentence review board created  
10 under chapter 9.95 RCW.

11 (2) "Collect," or any derivative thereof, "collect and remit," or  
12 "collect and deliver," when used with reference to the department,  
13 means that the department, either directly or through a collection  
14 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
15 and enforcing the offender's sentence with regard to the legal  
16 financial obligation, receiving payment thereof from the offender, and,  
17 consistent with current law, delivering daily the entire payment to the  
18 superior court clerk without depositing it in a departmental account.

19 (3) "Commission" means the sentencing guidelines commission.

1 (4) "Community corrections officer" means an employee of the  
2 department who is responsible for carrying out specific duties in  
3 supervision of sentenced offenders and monitoring of sentence  
4 conditions.

5 (5) "Community custody" means that portion of an offender's  
6 sentence of confinement in lieu of earned release time or imposed  
7 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
8 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
9 community subject to controls placed on the offender's movement and  
10 activities by the department. For offenders placed on community  
11 custody for crimes committed on or after July 1, 2000, the department  
12 shall assess the offender's risk of reoffense and may establish and  
13 modify conditions of community custody, in addition to those imposed by  
14 the court, based upon the risk to community safety.

15 (6) "Community custody range" means the minimum and maximum period  
16 of community custody included as part of a sentence under RCW  
17 9.94A.715, as established by the commission or the legislature under  
18 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

19 (7) "Community placement" means that period during which the  
20 offender is subject to the conditions of community custody and/or  
21 postrelease supervision, which begins either upon completion of the  
22 term of confinement (postrelease supervision) or at such time as the  
23 offender is transferred to community custody in lieu of earned release.  
24 Community placement may consist of entirely community custody, entirely  
25 postrelease supervision, or a combination of the two.

26 (8) "Community restitution" means compulsory service, without  
27 compensation, performed for the benefit of the community by the  
28 offender.

29 (9) "Community supervision" means a period of time during which a  
30 convicted offender is subject to crime-related prohibitions and other  
31 sentence conditions imposed by a court pursuant to this chapter or RCW  
32 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
33 a chemical dependency that has contributed to his or her offense, the  
34 conditions of supervision may, subject to available resources, include  
35 treatment. For purposes of the interstate compact for out-of-state  
36 supervision of parolees and probationers, RCW 9.95.270, community  
37 supervision is the functional equivalent of probation and should be  
38 considered the same as probation by other states.

1           (10) "Confinement" means total or partial confinement.

2           (11) "Conviction" means an adjudication of guilt pursuant to Titles  
3 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
4 acceptance of a plea of guilty.

5           (12) "Crime-related prohibition" means an order of a court  
6 prohibiting conduct that directly relates to the circumstances of the  
7 crime for which the offender has been convicted, and shall not be  
8 construed to mean orders directing an offender affirmatively to  
9 participate in rehabilitative programs or to otherwise perform  
10 affirmative conduct. However, affirmative acts necessary to monitor  
11 compliance with the order of a court may be required by the department.

12           (13) "Criminal history" means the list of a defendant's prior  
13 convictions and juvenile adjudications, whether in this state, in  
14 federal court, or elsewhere.

15           (a) The history shall include, where known, for each conviction (i)  
16 whether the defendant has been placed on probation and the length and  
17 terms thereof; and (ii) whether the defendant has been incarcerated and  
18 the length of incarceration.

19           (b) A conviction may be removed from a defendant's criminal history  
20 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
21 a similar out-of-state statute, or if the conviction has been vacated  
22 pursuant to a governor's pardon.

23           (c) The determination of a defendant's criminal history is distinct  
24 from the determination of an offender score. A prior conviction that  
25 was not included in an offender score calculated pursuant to a former  
26 version of the sentencing reform act remains part of the defendant's  
27 criminal history.

28           (14) "Day fine" means a fine imposed by the sentencing court that  
29 equals the difference between the offender's net daily income and the  
30 reasonable obligations that the offender has for the support of the  
31 offender and any dependents.

32           (15) "Day reporting" means a program of enhanced supervision  
33 designed to monitor the offender's daily activities and compliance with  
34 sentence conditions, and in which the offender is required to report  
35 daily to a specific location designated by the department or the  
36 sentencing court.

37           (16) "Department" means the department of corrections.

1 (17) "Determinate sentence" means a sentence that states with  
2 exactitude the number of actual years, months, or days of total  
3 confinement, of partial confinement, of community supervision, the  
4 number of actual hours or days of community restitution work, or  
5 dollars or terms of a legal financial obligation. The fact that an  
6 offender through earned release can reduce the actual period of  
7 confinement shall not affect the classification of the sentence as a  
8 determinate sentence.

9 (18) "Disposable earnings" means that part of the earnings of an  
10 offender remaining after the deduction from those earnings of any  
11 amount required by law to be withheld. For the purposes of this  
12 definition, "earnings" means compensation paid or payable for personal  
13 services, whether denominated as wages, salary, commission, bonuses, or  
14 otherwise, and, notwithstanding any other provision of law making the  
15 payments exempt from garnishment, attachment, or other process to  
16 satisfy a court-ordered legal financial obligation, specifically  
17 includes periodic payments pursuant to pension or retirement programs,  
18 or insurance policies of any type, but does not include payments made  
19 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
20 or Title 74 RCW.

21 (19) "Drug offender sentencing alternative" is a sentencing option  
22 available to persons convicted of a felony offense other than a violent  
23 offense or a sex offense and who are eligible for the option under RCW  
24 9.94A.660.

25 (20) "Drug offense" means:

26 (a) Any felony violation of chapter 69.50 RCW except possession of  
27 a controlled substance (RCW 69.50.4013) or forged prescription for a  
28 controlled substance (RCW 69.50.403);

29 (b) Any offense defined as a felony under federal law that relates  
30 to the possession, manufacture, distribution, or transportation of a  
31 controlled substance; or

32 (c) Any out-of-state conviction for an offense that under the laws  
33 of this state would be a felony classified as a drug offense under (a)  
34 of this subsection.

35 (21) "Earned release" means earned release from confinement as  
36 provided in RCW 9.94A.728.

37 (22) "Escape" means:

1 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
2 first degree (RCW 9A.76.110), escape in the second degree (RCW  
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
4 willful failure to return from work release (RCW 72.65.070), or willful  
5 failure to be available for supervision by the department while in  
6 community custody (RCW 72.09.310); or

7 (b) Any federal or out-of-state conviction for an offense that  
8 under the laws of this state would be a felony classified as an escape  
9 under (a) of this subsection.

10 (23) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
12 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
13 and-run injury-accident (RCW 46.52.020(4)); or

14 (b) Any federal or out-of-state conviction for an offense that  
15 under the laws of this state would be a felony classified as a felony  
16 traffic offense under (a) of this subsection.

17 (24) "Fine" means a specific sum of money ordered by the sentencing  
18 court to be paid by the offender to the court over a specific period of  
19 time.

20 (25) "First-time offender" means any person who has no prior  
21 convictions for a felony and is eligible for the first-time offender  
22 waiver under RCW 9.94A.650.

23 (26) "Home detention" means a program of partial confinement  
24 available to offenders wherein the offender is confined in a private  
25 residence subject to electronic surveillance.

26 (27) "Legal financial obligation" means a sum of money that is  
27 ordered by a superior court of the state of Washington for legal  
28 financial obligations which may include restitution to the victim,  
29 statutorily imposed crime victims' compensation fees as assessed  
30 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
31 court-appointed attorneys' fees, and costs of defense, fines, and any  
32 other financial obligation that is assessed to the offender as a result  
33 of a felony conviction. Upon conviction for vehicular assault while  
34 under the influence of intoxicating liquor or any drug, RCW  
35 46.61.522(1)(b), or vehicular homicide while under the influence of  
36 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
37 obligations may also include payment to a public agency of the expense

1 of an emergency response to the incident resulting in the conviction,  
2 subject to RCW 38.52.430.

3 (28) "Most serious offense" means any of the following felonies or  
4 a felony attempt to commit any of the following felonies:

5 (a) Any felony defined under any law as a class A felony or  
6 criminal solicitation of or criminal conspiracy to commit a class A  
7 felony;

8 (b) Assault in the second degree;

9 (c) Assault of a child in the second degree;

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

13 (g) Incest when committed against a child under age fourteen;

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

23 (q) Vehicular assault, when caused by the operation or driving of  
24 a vehicle by a person while under the influence of intoxicating liquor  
25 or any drug or by the operation or driving of a vehicle in a reckless  
26 manner;

27 (r) Vehicular homicide, when proximately caused by the driving of  
28 any vehicle by any person while under the influence of intoxicating  
29 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
30 any vehicle in a reckless manner;

31 (s) Any other class B felony offense with a finding of sexual  
32 motivation;

33 (t) Any other felony with a deadly weapon verdict under RCW  
34 9.94A.602;

35 (u) Any felony offense in effect at any time prior to December 2,  
36 1993, that is comparable to a most serious offense under this  
37 subsection, or any federal or out-of-state conviction for an offense

1 that under the laws of this state would be a felony classified as a  
2 most serious offense under this subsection;

3 (v)(i) A prior conviction for indecent liberties under RCW  
4 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
5 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
6 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
7 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

8 (ii) A prior conviction for indecent liberties under RCW  
9 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
10 if: (A) The crime was committed against a child under the age of  
11 fourteen; or (B) the relationship between the victim and perpetrator is  
12 included in the definition of indecent liberties under RCW  
13 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
14 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
15 through July 27, 1997.

16 (29) "Nonviolent offense" means an offense which is not a violent  
17 offense.

18 (30) "Offender" means a person who has committed a felony  
19 established by state law and is eighteen years of age or older or is  
20 less than eighteen years of age but whose case is under superior court  
21 jurisdiction under RCW 13.04.030 or has been transferred by the  
22 appropriate juvenile court to a criminal court pursuant to RCW  
23 13.40.110. Throughout this chapter, the terms "offender" and  
24 "defendant" are used interchangeably.

25 (31) "Partial confinement" means confinement for no more than one  
26 year in a facility or institution operated or utilized under contract  
27 by the state or any other unit of government, or, if home detention or  
28 work crew has been ordered by the court, in an approved residence, for  
29 a substantial portion of each day with the balance of the day spent in  
30 the community. Partial confinement includes residential chemical  
31 dependency treatment, work release, home detention, work crew, and a  
32 combination of work crew and home detention.

33 (32) "Persistent offender" is an offender who:

34 (a)(i) Has been convicted in this state of any felony considered a  
35 most serious offense; and

36 (ii) Has, before the commission of the offense under (a) of this  
37 subsection, been convicted as an offender on at least two separate  
38 occasions, whether in this state or elsewhere, of felonies that under

1 the laws of this state would be considered most serious offenses and  
2 would be included in the offender score under RCW 9.94A.525; provided  
3 that of the two or more previous convictions, at least one conviction  
4 must have occurred before the commission of any of the other most  
5 serious offenses for which the offender was previously convicted; or

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
7 of a child in the first degree, child molestation in the first degree,  
8 rape in the second degree, rape of a child in the second degree, or  
9 indecent liberties by forcible compulsion; (B) any of the following  
10 offenses with a finding of sexual motivation: Murder in the first  
11 degree, murder in the second degree, homicide by abuse, kidnapping in  
12 the first degree, kidnapping in the second degree, assault in the first  
13 degree, assault in the second degree, assault of a child in the first  
14 degree, or burglary in the first degree; or (C) an attempt to commit  
15 any crime listed in this subsection (32)(b)(i); and

16 (ii) Has, before the commission of the offense under (b)(i) of this  
17 subsection, been convicted as an offender on at least one occasion,  
18 whether in this state or elsewhere, of an offense listed in (b)(i) of  
19 this subsection or any federal or out-of-state offense or offense under  
20 prior Washington law that is comparable to the offenses listed in  
21 (b)(i) of this subsection. A conviction for rape of a child in the  
22 first degree constitutes a conviction under (b)(i) of this subsection  
23 only when the offender was sixteen years of age or older when the  
24 offender committed the offense. A conviction for rape of a child in  
25 the second degree constitutes a conviction under (b)(i) of this  
26 subsection only when the offender was eighteen years of age or older  
27 when the offender committed the offense.

28 (33) "Postrelease supervision" is that portion of an offender's  
29 community placement that is not community custody.

30 (34) "Restitution" means a specific sum of money ordered by the  
31 sentencing court to be paid by the offender to the court over a  
32 specified period of time as payment of damages. The sum may include  
33 both public and private costs.

34 (35) "Risk assessment" means the application of an objective  
35 instrument supported by research and adopted by the department for the  
36 purpose of assessing an offender's risk of reoffense, taking into  
37 consideration the nature of the harm done by the offender, place and  
38 circumstances of the offender related to risk, the offender's



1 relationship to any victim, and any information provided to the  
2 department by victims. The results of a risk assessment shall not be  
3 based on unconfirmed or unconfirmable allegations.

4 (36) "Serious traffic offense" means:

5 (a) Driving while under the influence of intoxicating liquor or any  
6 drug (RCW 46.61.502), actual physical control while under the influence  
7 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
8 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
9 or

10 (b) Any federal, out-of-state, county, or municipal conviction for  
11 an offense that under the laws of this state would be classified as a  
12 serious traffic offense under (a) of this subsection.

13 (37) "Serious violent offense" is a subcategory of violent offense  
14 and means:

15 (a)(i) Murder in the first degree;

16 (ii) Homicide by abuse;

17 (iii) Murder in the second degree;

18 (iv) Manslaughter in the first degree;

19 (v) Assault in the first degree;

20 (vi) Kidnapping in the first degree;

21 (vii) Rape in the first degree;

22 (viii) Assault of a child in the first degree; or

23 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
24 commit one of these felonies; or

25 (b) Any federal or out-of-state conviction for an offense that  
26 under the laws of this state would be a felony classified as a serious  
27 violent offense under (a) of this subsection.

28 (38) "Sex offense" means:

29 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
30 RCW 9A.44.130(11);

31 (ii) A violation of RCW 9A.64.020;

32 (iii) A felony that is a violation of chapter 9.68A RCW other than  
33 RCW 9.68A.070 or 9.68A.080; or

34 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
35 criminal solicitation, or criminal conspiracy to commit such crimes;

36 (b) Any conviction for a felony offense in effect at any time prior  
37 to July 1, 1976, that is comparable to a felony classified as a sex  
38 offense in (a) of this subsection;

1 (c) A felony with a finding of sexual motivation under RCW  
2 9.94A.835 or 13.40.135; or

3 (d) Any federal or out-of-state conviction for an offense that  
4 under the laws of this state would be a felony classified as a sex  
5 offense under (a) of this subsection.

6 (39) "Sexual motivation" means that one of the purposes for which  
7 the defendant committed the crime was for the purpose of his or her  
8 sexual gratification.

9 (40) "Standard sentence range" means the sentencing court's  
10 discretionary range in imposing a nonappealable sentence.

11 (41) "Statutory maximum sentence" means the maximum length of time  
12 for which an offender may be confined as punishment for a crime as  
13 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
14 crime, or other statute defining the maximum penalty for a crime.

15 (42) "Total confinement" means confinement inside the physical  
16 boundaries of a facility or institution operated or utilized under  
17 contract by the state or any other unit of government for twenty-four  
18 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

19 (43) "Transition training" means written and verbal instructions  
20 and assistance provided by the department to the offender during the  
21 two weeks prior to the offender's successful completion of the work  
22 ethic camp program. The transition training shall include instructions  
23 in the offender's requirements and obligations during the offender's  
24 period of community custody.

25 (44) "Victim" means any person who has sustained emotional,  
26 psychological, physical, or financial injury to person or property as  
27 a direct result of the crime charged.

28 (45) "Violent offense" means:

29 (a) Any of the following felonies:

30 (i) Any felony defined under any law as a class A felony or an  
31 attempt to commit a class A felony;

32 (ii) Criminal solicitation of or criminal conspiracy to commit a  
33 class A felony;

34 (iii) Manslaughter in the first degree;

35 (iv) Manslaughter in the second degree;

36 (v) Indecent liberties if committed by forcible compulsion;

37 (vi) Kidnapping in the second degree;

38 (vii) Arson in the second degree;

1 (viii) Assault in the second degree;

2 (ix) Assault of a child in the second degree;

3 (x) Extortion in the first degree;

4 (xi) Robbery in the second degree;

5 (xii) Drive-by shooting;

6 (xiii) Vehicular assault, when caused by the operation or driving  
7 of a vehicle by a person while under the influence of intoxicating  
8 liquor or any drug or by the operation or driving of a vehicle in a  
9 reckless manner; and

10 (xiv) Vehicular homicide, when proximately caused by the driving of  
11 any vehicle by any person while under the influence of intoxicating  
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
13 any vehicle in a reckless manner;

14 (b) Any conviction for a felony offense in effect at any time prior  
15 to July 1, 1976, that is comparable to a felony classified as a violent  
16 offense in (a) of this subsection; and

17 (c) Any federal or out-of-state conviction for an offense that  
18 under the laws of this state would be a felony classified as a violent  
19 offense under (a) or (b) of this subsection.

20 (46) "Work crew" means a program of partial confinement consisting  
21 of civic improvement tasks for the benefit of the community that  
22 complies with RCW 9.94A.725.

23 (47) "Work ethic camp" means an alternative incarceration program  
24 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
25 the cost of corrections by requiring offenders to complete a  
26 comprehensive array of real-world job and vocational experiences,  
27 character-building work ethics training, life management skills  
28 development, substance abuse rehabilitation, counseling, literacy  
29 training, and basic adult education.

30 (48) "Work release" means a program of partial confinement  
31 available to offenders who are employed or engaged as a student in a  
32 regular course of study at school.

33 **Sec. 2.** RCW 9.94A.728 and 2004 c 176 s 6 are each amended to read  
34 as follows:

35 No person serving a sentence imposed pursuant to this chapter and  
36 committed to the custody of the department shall leave the confines of

1 the correctional facility or be released prior to the expiration of the  
2 sentence except as follows:

3 (1) Except as otherwise provided for in subsection (2) of this  
4 section, the term of the sentence of an offender committed to a  
5 correctional facility operated by the department may be reduced by  
6 earned release time in accordance with procedures that shall be  
7 developed and promulgated by the correctional agency having  
8 jurisdiction in which the offender is confined. The earned release  
9 time shall be for good behavior and good performance, as determined by  
10 the correctional agency having jurisdiction. The correctional agency  
11 shall not credit the offender with earned release credits in advance of  
12 the offender actually earning the credits. Any program established  
13 pursuant to this section shall allow an offender to earn early release  
14 credits for presentence incarceration. If an offender is transferred  
15 from a county jail to the department, the administrator of a county  
16 jail facility shall certify to the department the amount of time spent  
17 in custody at the facility and the amount of earned release time. An  
18 offender who has been convicted of a felony committed after July 23,  
19 1995, that involves any applicable deadly weapon enhancements under RCW  
20 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
21 or earned release time for that portion of his or her sentence that  
22 results from any deadly weapon enhancements.

23 (a) In the case of an offender convicted of a serious violent  
24 offense, or a sex offense that is a class A felony, committed on or  
25 after July 1, 1990, and before July 1, 2003, the aggregate earned  
26 release time may not exceed fifteen percent of the sentence. In the  
27 case of an offender convicted of a serious violent offense, or a sex  
28 offense that is a class A felony, committed on or after July 1, 2003,  
29 the aggregate earned release time may not exceed ten percent of the  
30 sentence.

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

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

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

1 (B) Is not confined pursuant to a sentence for:  
2 (I) A sex offense;  
3 (II) A violent offense;  
4 (III) A crime against persons as defined in RCW 9.94A.411;  
5 (IV) A felony that is domestic violence as defined in RCW  
6 10.99.020;  
7 (V) A violation of RCW 9A.52.025 (residential burglary);  
8 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
9 violate, RCW 69.50.401 by manufacture or delivery or possession with  
10 intent to deliver methamphetamine; or  
11 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
12 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
13 and  
14 (C) Has no prior conviction for:  
15 (I) A sex offense;  
16 (II) A violent offense;  
17 (III) A crime against persons as defined in RCW 9.94A.411;  
18 (IV) A felony that is domestic violence as defined in RCW  
19 10.99.020;  
20 (V) A violation of RCW 9A.52.025 (residential burglary);  
21 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
22 violate, RCW 69.50.401 by manufacture or delivery or possession with  
23 intent to deliver methamphetamine; or  
24 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
25 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).  
26 (iii) For purposes of determining an offender's eligibility under  
27 this subsection (1)(b), the department shall perform a risk assessment  
28 of every offender committed to a correctional facility operated by the  
29 department who has no current or prior conviction for a sex offense, a  
30 violent offense, a crime against persons as defined in RCW 9.94A.411,  
31 a felony that is domestic violence as defined in RCW 10.99.020, a  
32 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
33 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
34 manufacture or delivery or possession with intent to deliver  
35 methamphetamine, or a violation of, or an attempt, solicitation, or  
36 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
37 substance to a minor). The department must classify each assessed

1 offender in one of four risk categories between highest and lowest  
2 risk.

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

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

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

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

13 (2)(a) A person convicted of a sex offense or an offense  
14 categorized as a serious violent offense, assault in the second degree,  
15 vehicular homicide, vehicular assault, assault of a child in the second  
16 degree, any crime against persons where it is determined in accordance  
17 with RCW 9.94A.602 that the offender or an accomplice was armed with a  
18 deadly weapon at the time of commission, or any felony offense under  
19 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become  
20 eligible, in accordance with a program developed by the department, for  
21 transfer to community custody status in lieu of earned release time  
22 pursuant to subsection (1) of this section;

23 (b) A person convicted of a sex offense, a violent offense, any  
24 crime against persons under RCW 9.94A.411(2), or a felony offense under  
25 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may  
26 become eligible, in accordance with a program developed by the  
27 department, for transfer to community custody status in lieu of earned  
28 release time pursuant to subsection (1) of this section;

29 (c) The department shall, as a part of its program for release to  
30 the community in lieu of earned release, require the offender to  
31 propose a release plan that includes an approved residence and living  
32 arrangement. All offenders with community placement or community  
33 custody terms eligible for release to community custody status in lieu  
34 of earned release shall provide an approved residence and living  
35 arrangement prior to release to the community;

36 (d) The department may deny transfer to community custody status in  
37 lieu of earned release time pursuant to subsection (1) of this section  
38 if the department determines an offender's release plan, including

1 proposed residence location and living arrangements, may violate the  
2 conditions of the sentence or conditions of supervision, place the  
3 offender at risk to violate the conditions of the sentence, place the  
4 offender at risk to reoffend, or present a risk to victim safety or  
5 community safety. The department's authority under this section is  
6 independent of any court-ordered condition of sentence or statutory  
7 provision regarding conditions for community custody or community  
8 placement;

9 (e) An offender serving a term of confinement imposed under RCW  
10 9.94A.670(4)(a) is not eligible for earned release credits under this  
11 section;

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

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

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

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

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

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

28 (c) The secretary shall require electronic monitoring for all  
29 offenders in extraordinary medical placement unless the electronic  
30 monitoring equipment interferes with the function of the offender's  
31 medical equipment or results in the loss of funding for the offender's  
32 medical care. The secretary shall specify who shall provide the  
33 monitoring services and the terms under which the monitoring shall be  
34 performed.

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

37 (5) The governor, upon recommendation from the clemency and pardons

1 board, may grant an extraordinary release for reasons of serious health  
2 problems, senility, advanced age, extraordinary meritorious acts, or  
3 other extraordinary circumstances;

4 (6) No more than the final (~~six~~) twelve months of the sentence  
5 may be served in partial confinement designed to aid the offender in  
6 finding work and reestablishing himself or herself in the community;

7 (7) The governor may pardon any offender;

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

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

14 Notwithstanding any other provisions of this section, an offender  
15 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a  
16 mandatory minimum sentence of total confinement shall not be released  
17 from total confinement before the completion of the listed mandatory  
18 minimum sentence for that felony crime of conviction unless allowed  
19 under RCW 9.94A.540, however persistent offenders are not eligible for  
20 extraordinary medical placement.

21 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of the  
23 state government and its existing public institutions, and takes effect  
24 July 1, 2005.

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