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**SUBSTITUTE HOUSE BILL 2652**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives O'Brien, Ahern, Kagi, Darneille, Simpson, G., Campbell and Lovick)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to making persons convicted of felony hit and run  
2 ineligible for fifty percent earned release credits; amending RCW  
3 9.94A.728; and declaring an emergency.

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

5 **Sec. 1.** RCW 9.94A.728 and 2003 c 379 s 1 are each amended to read  
6 as follows:

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

11 (1) Except as otherwise provided for in subsection (2) of this  
12 section, the term of the sentence of an offender committed to a  
13 correctional facility operated by the department may be reduced by  
14 earned release time in accordance with procedures that shall be  
15 developed and promulgated by the correctional agency having  
16 jurisdiction in which the offender is confined. The earned release  
17 time shall be for good behavior and good performance, as determined by  
18 the correctional agency having jurisdiction. The correctional agency  
19 shall not credit the offender with earned release credits in advance of

1 the offender actually earning the credits. Any program established  
2 pursuant to this section shall allow an offender to earn early release  
3 credits for presentence incarceration. If an offender is transferred  
4 from a county jail to the department, the administrator of a county  
5 jail facility shall certify to the department the amount of time spent  
6 in custody at the facility and the amount of earned release time. An  
7 offender who has been convicted of a felony committed after July 23,  
8 1995, that involves any applicable deadly weapon enhancements under RCW  
9 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
10 or earned release time for that portion of his or her sentence that  
11 results from any deadly weapon enhancements.

12 (a) In the case of an offender convicted of a serious violent  
13 offense, or a sex offense that is a class A felony, committed on or  
14 after July 1, 1990, and before July 1, 2003, the aggregate earned  
15 release time may not exceed fifteen percent of the sentence. In the  
16 case of an offender convicted of a serious violent offense, or a sex  
17 offense that is a class A felony, committed on or after July 1, 2003,  
18 the aggregate earned release time may not exceed ten percent of the  
19 sentence.

20 (b)(i) In the case of an offender who qualifies under (b)(ii) or  
21 (iii) of this subsection, the aggregate earned release time may not  
22 exceed fifty percent of the sentence.

23 (ii) An offender convicted of a crime committed prior to the  
24 effective date of this act, is qualified to earn up to fifty percent of  
25 aggregate earned release time under this subsection (1)(b) if he or  
26 she:

27 (A) Is classified in one of the two lowest risk categories under  
28 (b)(~~(iii)~~) (iv) of this subsection;

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

30 (I) A sex offense;

31 (II) A violent offense;

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

33 (IV) A felony that is domestic violence as defined in RCW  
34 10.99.020;

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

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

1 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
2 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
3 and

4 (C) Has no prior conviction for:

5 (I) A sex offense;

6 (II) A violent offense;

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

8 (IV) A felony that is domestic violence as defined in RCW  
9 10.99.020;

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

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

14 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
15 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).

16 (iii) An offender convicted of a crime committed on or after the  
17 effective date of this act is qualified to earn up to fifty percent of  
18 aggregate earned release time under this subsection (1)(b) if he or  
19 she:

20 (A) Meets the qualifications in (b)(ii)(A), (B), and (C) of this  
21 subsection; and

22 (B) Is not confined pursuant to a sentence, and has no prior  
23 conviction for:

24 (I) A violation of RCW 46.52.020(4)(a) (hit and run - death); or

25 (II) A violation of RCW 46.52.020(4)(b) (hit and run - injury).

26 (iv) 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,~~  
30 ~~a 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)) an offense listed in (b)(ii)(B) or (C) or~~

1 (b)(iii)(B) or (C) of this subsection. The department must classify  
2 each assessed offender in one of four risk categories between highest  
3 and lowest risk.

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

7 ~~((v))~~ (vi) With the exception of (b)(iii) of this subsection,  
8 this subsection (1)(b) applies retroactively to eligible offenders  
9 serving terms of total confinement in a state correctional facility as  
10 of July 1, 2003.

11 ~~((vi))~~ (vii) This subsection (1)(b) does not apply to offenders  
12 convicted after July 1, 2010.

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

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

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

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

1 (d) The department may deny transfer to community custody status in  
2 lieu of earned release time pursuant to subsection (1) of this section  
3 if the department determines an offender's release plan, including  
4 proposed residence location and living arrangements, may violate the  
5 conditions of the sentence or conditions of supervision, place the  
6 offender at risk to violate the conditions of the sentence, place the  
7 offender at risk to reoffend, or present a risk to victim safety or  
8 community safety. The department's authority under this section is  
9 independent of any court-ordered condition of sentence or statutory  
10 provision regarding conditions for community custody or community  
11 placement;

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 months of the sentence may be served  
5 in partial confinement designed to aid the offender in finding work and  
6 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. 2.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
26 preservation of the public peace, health, or safety, or support of the  
27 state government and its existing public institutions, and takes effect  
28 immediately.

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