
HOUSE BILL 1924

State of Washington 61st Legislature 2009 Regular Session

By Representatives Dickerson, O'Brien, Darneille, Appleton, and Ormsby

Read first time 02/03/09. Referred to Committee on Human Services.

1 AN ACT Relating to continuing availability of fifty percent earned
2 release for certain nonviolent offenders; amending RCW 9.94A.728; and
3 providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.728 and 2008 c 231 s 34 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) of
21 this subsection, the aggregate earned release time may not exceed fifty
22 percent of the sentence.

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

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

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

29 (I) A sex offense;

30 (II) A violent offense;

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

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

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

35 (VI) A violation of, or an attempt, solicitation, or conspiracy to
36 violate, RCW 69.50.401 by manufacture or delivery or possession with
37 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 (C) Has no prior conviction for:

4 (I) A sex offense;

5 (II) A violent offense;

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

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

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

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

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

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

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

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

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

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

4 ~~((vi) This subsection (1)(b) does not apply to offenders convicted
5 after July 1, 2010.))~~

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

8 (2)(a) A person convicted of a sex offense, a violent offense, any
9 crime against persons under RCW 9.94A.411(2), or a felony offense under
10 chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a
11 program developed by the department, for transfer to community custody
12 in lieu of earned release time pursuant to subsection (1) of this
13 section;

14 (b) The department shall, as a part of its program for release to
15 the community in lieu of earned release, require the offender to
16 propose a release plan that includes an approved residence and living
17 arrangement. All offenders with community custody terms eligible for
18 release to community custody in lieu of earned release shall provide an
19 approved residence and living arrangement prior to release to the
20 community;

21 (c) The department may deny transfer to community custody in lieu
22 of earned release time pursuant to subsection (1) of this section if
23 the department determines an offender's release plan, including
24 proposed residence location and living arrangements, may violate the
25 conditions of the sentence or conditions of supervision, place the
26 offender at risk to violate the conditions of the sentence, place the
27 offender at risk to reoffend, or present a risk to victim safety or
28 community safety. The department's authority under this section is
29 independent of any court-ordered condition of sentence or statutory
30 provision regarding conditions for community custody;

31 (d) If the department denies transfer to community custody in lieu
32 of earned early release pursuant to (c) of this subsection, the
33 department may transfer an offender to partial confinement in lieu of
34 earned early release up to three months. The three months in partial
35 confinement is in addition to that portion of the offender's term of
36 confinement that may be served in partial confinement as provided in
37 this section;

1 (e) An offender serving a term of confinement imposed under RCW
2 9.94A.670(5)(a) is not eligible for earned release credits under this
3 section;

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

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

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

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

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

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

20 (c) The secretary shall require electronic monitoring for all
21 offenders in extraordinary medical placement unless the electronic
22 monitoring equipment interferes with the function of the offender's
23 medical equipment or results in the loss of funding for the offender's
24 medical care. The secretary shall specify who shall provide the
25 monitoring services and the terms under which the monitoring shall be
26 performed.

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

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

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

1 (7) The governor may pardon any offender;

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

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

8 (10) Notwithstanding any other provisions of this section, an
9 offender sentenced for a felony crime listed in RCW 9.94A.540 as
10 subject to a mandatory minimum sentence of total confinement shall not
11 be released from total confinement before the completion of the listed
12 mandatory minimum sentence for that felony crime of conviction unless
13 allowed under RCW 9.94A.540, however persistent offenders are not
14 eligible for extraordinary medical placement.

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

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