

SHB 1547 - H AMD 250

By Representative Santos

FAILED 03/02/2011

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

3 "Sec. 1. RCW 9.94A.685 and 1993 c 419 s 1 are each amended to read
4 as follows:

5 (1) Subject to the limitations of this section, any alien offender
6 committed to the custody of the department under the sentencing reform
7 act of 1981, chapter 9.94A RCW, who has been found by the United States
8 attorney general to be subject to a final order of deportation or
9 exclusion, may be placed on conditional release status and released to
10 the immigration and (~~naturalization service~~) customs enforcement
11 agency for deportation at any time prior to the expiration of the
12 offender's term of confinement. The legal determination and
13 deportation is an activity of the federal government exclusively.
14 Neither the department nor its staff shall be delegated nor shall the
15 department or its staff assume a decision-making role in this process.
16 Conditional release shall continue until the expiration of the
17 statutory maximum sentence provided by law for the crime or crimes of
18 which the offender was convicted. If the offender has multiple current
19 convictions, the statutory maximum sentence allowed by law for each
20 crime shall run concurrently.

21 (2) Offenders placed on conditional release status from Washington
22 state correctional facilities are in a program specific to Washington.
23 Placement on conditional release status does not constitute
24 participation in the immigration and customs enforcement agency's rapid
25 removal of eligible parolees accepted for transfer program.

26 (3) No offender may be released under this section unless:

27 (a) ~~The secretary or the secretary's designee ((find [finds] that~~
28 ~~such release is in the best interests of the state of Washington.~~
29 ~~Further, releases under this section may occur only with the approval~~
30 ~~of the sentencing court and the prosecuting attorney of the county of~~

1 conviction)) has confirmed that the detention facilities in Washington
2 state operated by the immigration and customs enforcement agency, or
3 operated under contract with the immigration and customs enforcement
4 agency, have written guidelines in place that comport with the
5 international and domestic human rights laws regarding the detention of
6 offenders, due process, and personnel training and that these
7 facilities meet Washington state and federal constitutional standards
8 for correctional facilities;

9 (b) The immigration and customs enforcement agency will permit the
10 secretary of the department or his or her designee to periodically
11 review the conditions and procedures at its facilities, including due
12 process, personnel training, and the treatment of detained offenders,
13 as they affect offenders placed on conditional release status;

14 (c) The secretary or the secretary's designee has reached an
15 agreement with the immigration and customs enforcement agency that the
16 alien offender placed on conditional release status will be detained in
17 total confinement at a facility operated by the immigration and customs
18 enforcement agency pending the offender's return to the country of
19 origin or other location designated in the final deportation or
20 exclusion order;

21 (d) The alien offender, prior to stipulating to an order of removal
22 prior to the issuance of a final deportation order by the United States
23 attorney general, has been provided access to information regarding his
24 or her due process rights and has had an opportunity to consult with an
25 attorney or legal representative; and

26 (e) The secretary or the secretary's designee finds that such
27 release is in the best interests of the state of Washington.

28 (4) If the secretary determines that state or federal
29 constitutional standards are not being met at the detention facilities
30 described in this section, the secretary shall immediately report the
31 same to the governor and the legislature and shall immediately refrain
32 from releasing offenders pursuant to this section.

33 (5) The secretary, in consultation with a representative from an
34 immigration legal advocacy organization, shall report biannually to the
35 governor and the legislature regarding the substance of the secretary's
36 review described in subsection (3)(b) of this section and any
37 conclusions and recommendations made pursuant to that review. Such

1 report shall make recommendations for modifications of policies or
2 procedures, if appropriate. The first report shall be due on December
3 10, 2011.

4 ((+3)) (6) No offender may be released under this section who is
5 serving a sentence for a violent offense or sex offense, as defined in
6 RCW 9.94A.030, or any other offense that is a crime against a person.

7 ((+4)) (7) The unserved portion of the term of confinement of any
8 offender released under this section shall be tolled at the time the
9 offender is released to the immigration and ((~~naturalization service~~)
10 customs enforcement agency for deportation. Upon the release of an
11 offender to the immigration and ((~~naturalization service~~) customs
12 enforcement agency, the department shall issue a warrant for the
13 offender's arrest within the United States. This warrant shall remain
14 in effect until the expiration of the offender's conditional release.

15 ((+5)) (8) Upon arrest of an offender, the department shall, upon
16 making a finding that it is in the best interest of the state, seek
17 extradition as necessary and the offender ((~~shall~~) may be returned to
18 the department for completion of the unserved portion of the offender's
19 term of total confinement. If returned, the offender shall also be
20 required to fully comply with all the terms and conditions of the
21 sentence.

22 ((+6)) (9) Alien offenders released to the immigration and
23 ((~~naturalization service~~) customs enforcement agency for deportation
24 under this section are not thereby relieved of their obligation to pay
25 restitution or other legal financial obligations ordered by the
26 sentencing court.

27 ((+7)) (10) Any offender released pursuant to this section who
28 returns illegally to the United States may not thereafter be released
29 again pursuant to this section.

30 ((+8)) (11) The secretary is authorized to take all reasonable
31 actions to implement this section and shall assist federal authorities
32 in prosecuting alien offenders who may illegally reenter the United
33 States and enter the state of Washington."

34 Correct the title.

EFFECT: (1) Provides that the Department of Corrections (DOC) has

no role in the deportation of an offender who is placed on conditional release status, a status which results in the transfer of custody from the DOC to the Immigration and Customs Enforcement Agency (ICE).

(2) Provides that offenders placed on conditional release status are not part of ICE's Rapid REPAT (removal of eligible parolees accepted for transfer) Program.

(3) Requires that an offender shall be not placed on conditional release status unless the Secretary or his or her designee (a) has confirmed that the detention facilities in Washington operated by or under contract have written guidelines in place that comport with international and domestic human rights laws and that the facilities meet state and federal constitutional standards for correctional facilities; (b) has confirmed that ICE will permit the DOC to periodically review the conditions of the facilities, including due process, personnel training; (c) has reached an agreement with ICE that an offender placed on conditional release will be detained in total confinement at a facility operated by ICE pending his or her return to the location designated in the deportation or exclusion order; (d) the offender has been provided access to information regarding due process and has had an opportunity to consult with an attorney or legal representative; and (e) finds that placement of the offender on conditional release is in the best interests of the state.

(4) Requires the Secretary of DOC to immediately report to the Governor and the Legislature of a facility where an offender on conditional release is being held does not meet state or federal constitutional standards and refrain from placing offenders on conditional release.

(5) Requires the Secretary of DOC to report biannually, in consultation with a representative from an immigration legal advocacy organization, to the Governor and the Legislature regarding the Secretary's review of the ICE facility and make appropriate recommendations; the first report is due on December 10, 2011.

(6) Provides that the DOC, if it finds that it is in the best interests of the state, and after seeking extradition, may return an offender to the DOC upon arrest after previously been placed on conditional release.

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