

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1547

Chapter 206, Laws of 2011

(partial veto)

62nd Legislature
2011 Regular Session

CRIMINAL ALIEN OFFENDERS--DEPORTATION

EFFECTIVE DATE: 04/29/11

Passed by the House April 21, 2011
Yeas 56 Nays 41

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 21, 2011
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved April 29, 2011, 3:55 p.m., with
the exception of Sections 2 and 3 which
are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of
the House of Representatives of
the State of Washington, do hereby
certify that the attached is
certify that the attached is
**ENGROSSED SUBSTITUTE HOUSE BILL
1547** as passed by the House of
Representatives and the Senate on
the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 29, 2011

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1547

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By House Ways & Means (originally sponsored by Representatives Darneille, Hunter, Dickerson, Cody, Hunt, Kagi, Sullivan, and Kenney)

READ FIRST TIME 02/25/11.

1 AN ACT Relating to the deportation of criminal alien offenders;
2 amending RCW 9.94A.685 and 10.40.200; adding a new section to chapter
3 9.94A RCW; and declaring an emergency.

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

5 **Sec. 1.** RCW 9.94A.685 and 1993 c 419 s 1 are each amended to read
6 as follows:

7 (1) Subject to the limitations of this section, any alien offender
8 committed to the custody of the department under the sentencing reform
9 act of 1981, chapter 9.94A RCW, who has been found by the United States
10 attorney general to be subject to a final order of deportation or
11 exclusion, may be placed on conditional release status and released to
12 the immigration and ((naturalization-service)) customs enforcement
13 agency for deportation at any time prior to the expiration of the
14 offender's term of confinement. Conditional release shall continue
15 until the expiration of the statutory maximum sentence provided by law
16 for the crime or crimes of which the offender was convicted. If the
17 offender has multiple current convictions, the statutory maximum
18 sentence allowed by law for each crime shall run concurrently.

1 (2) No offender may be released under this section unless the
2 secretary or the secretary's designee (~~(find [finds] that such release~~
3 ~~is in the best interests of the state of Washington. Further, releases~~
4 ~~under this section may occur only with the approval of the sentencing~~
5 ~~court and the prosecuting attorney of the county of conviction)) has
6 reached an agreement with the immigration and customs enforcement
7 agency that the alien offender placed on conditional release status
8 will be detained in total confinement at a facility operated by the
9 immigration and customs enforcement agency pending the offender's
10 return to the country of origin or other location designated in the
11 final deportation or exclusion order.~~

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

16 ((+4)) (3) The unserved portion of the term of confinement of any
17 offender released under this section shall be tolled at the time the
18 offender is released to the immigration and (~~(naturalization service))~~
19 customs enforcement agency for deportation. Upon the release of an
20 offender to the immigration and (~~(naturalization service))~~ customs
21 enforcement agency, the department shall issue a warrant for the
22 offender's arrest within the United States. This warrant shall remain
23 in effect (~~(until the expiration of the offender's conditional~~
24 ~~release)) indefinitely.~~

25 ((+5)) (4) Upon arrest of an offender, the department (~~(shall))~~
26 may seek extradition as necessary and the offender (~~(shall))~~ may be
27 returned to the department for completion of the unserved portion of
28 the offender's term of total confinement. If returned, the offender
29 shall also be required to fully comply with all the terms and
30 conditions of the sentence.

31 ((+6)) (5) Alien offenders released to the immigration and
32 (~~(naturalization service))~~ customs enforcement agency for deportation
33 under this section are not thereby relieved of their obligation to pay
34 restitution or other legal financial obligations ordered by the
35 sentencing court.

36 ((+7)) (6) Any offender released pursuant to this section who
37 returns illegally to the United States may not thereafter be released
38 again pursuant to this section.

1 ~~((+8))~~ (7) The secretary is authorized to take all reasonable
2 actions to implement this section and shall assist federal authorities
3 in prosecuting alien offenders who may illegally reenter the United
4 States and enter the state of Washington.

5 (8) The provisions of this section apply to persons convicted
6 before, on, or after the effective date of this section.

7 ****NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW***
8 ***to read as follows:***

9 (1) The department shall provide a written notice of rights in
10 removal proceedings to all offenders in the department's custody who
11 are subject to early release pursuant to RCW 9.94A.685. The notice
12 shall be provided as early in the removal process as feasible.

13 (2) The department shall work in conjunction with a qualified
14 nonprofit legal services organization in the state recognized by the
15 department of justice pursuant to 8 C.F.R. 1003.61, to create the
16 written notice required by subsection (1) of this section. A written
17 notice containing the advisals given to an individual at the first
18 master calendar hearing in a removal proceeding meets the requirements
19 of this section.

**Sec. 2 was vetoed. See message at end of chapter.*

20 ****Sec. 3. RCW 10.40.200 and 1983 c 199 s 1 are each amended to read***
21 ***as follows:***

22 (1) The legislature finds and declares that in many instances
23 involving an individual who is not a citizen of the United States
24 charged with an offense punishable as a crime under state law, a plea
25 of guilty is entered without the defendant knowing that a conviction of
26 such offense is grounds for deportation, exclusion from admission to
27 the United States, or denial of naturalization pursuant to the laws of
28 the United States. Therefore, it is the intent of the legislature in
29 enacting this section to promote fairness to such accused individuals
30 by requiring in such cases that acceptance of a guilty plea be preceded
31 by an appropriate warning of the special consequences for such a
32 defendant which may result from the plea. It is further the intent of
33 the legislature that at the time of the plea no defendant be required
34 to disclose his or her legal status to the court.

35 (2) Prior to acceptance of a plea of guilty to any offense
36 punishable as a crime under state law, except offenses designated as

1 *infractions under state law, the court shall determine that the*
2 *defendant has been advised of the following potential consequences of*
3 *conviction for a defendant who is not a citizen of the United States:*
4 *Deportation, exclusion from admission to the United States, or denial*
5 *of naturalization pursuant to the laws of the United States. A*
6 *defendant signing a guilty plea statement containing the advisement*
7 *required by this subsection shall be presumed to have received the*
8 *required advisement. If, after September 1, 1983, the defendant has*
9 *not been advised as required by this section and the defendant shows*
10 *that conviction of the offense to which the defendant pleaded guilty*
11 *may have the consequences for the defendant of deportation, exclusion*
12 *from admission to the United States, or denial of naturalization*
13 *pursuant to the laws of the United States, the court, on defendant's*
14 *motion, shall vacate the judgment and permit the defendant to withdraw*
15 *the plea of guilty and enter a plea of not guilty. Absent a written*
16 *acknowledgement by the defendant of the advisement required by this*
17 *subsection, the defendant shall be presumed not to have received the*
18 *required advisement.*

19 (3) *With respect to pleas accepted prior to September 1, 1983, it*
20 *is not the intent of the legislature that a defendant's failure to*
21 *receive the advisement required by subsection (2) of this section*
22 *should require the vacation of judgment and withdrawal of the plea or*
23 *constitute grounds for finding a prior conviction invalid.*

24 (4) Prior to acceptance of a plea of guilty to any offense
25 punishable as a crime under state law, except offenses designated as
26 infractions under state law, the court shall advise the defendant that,
27 pursuant to RCW 9.94A.685, the defendant may be subject to early
28 release from custody for removal from the United States as a
29 consequence of conviction and that the defendant may be able to contest
30 a removal order.

*Sec. 3 was vetoed. See message at end of chapter.

31 NEW SECTION. Sec. 4. This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the
33 state government and its existing public institutions, and takes effect
34 immediately.

Passed by the House April 21, 2011.

Passed by the Senate April 21, 2011.

Approved by the Governor April 29, 2011, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 2 and 3, Engrossed Substitute House Bill 1547 entitled:

"AN ACT Relating to the deportation of criminal alien offenders."

Section 2 requires the Department of Corrections to provide written notice of rights in removal proceedings to all offenders in the department's custody subject to potential conditional release under this statute. Advising offenders of these rights is the responsibility of the federal government at the time removal proceedings are initiated.

Section 3 requires a court to advise a defendant that he or she may be subject to early release from custody for removal from the United States as a consequence of conviction and that the defendant may be able to contest a removal order. Current law and court practices and procedures provide defendants with adequate notice of potential deportation consequences of a plea of guilty.

For these reasons, I have vetoed Sections 2 and 3 of Engrossed Substitute House Bill 1547.

With the exception of Sections 2 and 3 Engrossed Substitute House Bill 1547 is approved."