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ENGROSSED SUBSTITUTE SENATE BILL 5121

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State of Washington

67th Legislature

2021 Regular Session

**By** Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Das, Dhingra, Hasegawa, Mullet, Nguyen, and Wilson, C.; by request of Department of Corrections)

READ FIRST TIME 01/25/21.

1 AN ACT Relating to expanding eligibility for the graduated  
2 reentry program; amending RCW 9.94A.733 and 9.94A.728; and creating a  
3 new section.

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

5 **Sec. 1.** RCW 9.94A.733 and 2018 c 166 s 1 are each amended to  
6 read as follows:

7 ~~(1) ((No more than the final six months of the offender's term of~~  
8 ~~confinement may be served in partial confinement as home detention as~~  
9 ~~part of the graduated reentry program developed by the department.~~  
10 ~~However, an offender may not participate in the graduated reentry~~  
11 ~~program under this section unless he or she has served at least~~  
12 ~~twelve months in total confinement in a state correctional~~  
13 ~~faecility.))~~ (a) Except as provided in (b) of this subsection, an  
14 offender may not participate in the graduated reentry program under  
15 this subsection unless he or she has served at least six months in  
16 total confinement in a state correctional facility.

17 (i) An offender subject to (a) of this subsection may serve no  
18 more than the final five months of the offender's term of confinement  
19 in partial confinement as home detention as part of the graduated  
20 reentry program developed by the department.

1 (ii) Home detention under (a) of this subsection may not be  
2 imposed for individuals subject to a deportation order, civil  
3 commitment, or the interstate compact for adult offender supervision  
4 under RCW 9.94A.745.

5 (b) For offenders who meet the requirements of (b)(iii) of this  
6 subsection, an offender may not participate in the graduated reentry  
7 program unless he or she has served at least four months in total  
8 confinement in a state correctional facility.

9 (i) An offender under this subsection (1)(b) may serve the  
10 remaining period of the offender's term of confinement in partial  
11 confinement as home detention as part of the graduated reentry  
12 program developed by the department.

13 (ii) Home detention under this subsection (1)(b) may not be  
14 imposed for individuals subject to a deportation order or subject to  
15 the jurisdiction of the indeterminate sentence review board.

16 (iii) Home detention under this subsection (1)(b) may not be  
17 imposed for offenders currently serving a term of confinement for the  
18 following offenses:

19 (A) Any sex offense;

20 (B) Any violent offense; or

21 (C) Any crime against a person offense in accordance with the  
22 categorization of crimes against persons outlined in RCW  
23 9.94A.411(2).

24 (2) The secretary of the department may transfer an offender from  
25 a department correctional facility to home detention in the community  
26 if it is determined that the graduated reentry program is an  
27 appropriate placement and must assist the offender's transition from  
28 confinement to the community.

29 (3) The department and its officers, agents, and employees are  
30 not liable for the acts of offenders participating in the graduated  
31 reentry program unless the department or its officers, agents, and  
32 employees acted with willful and wanton disregard.

33 (4) All offenders placed on home detention as part of the  
34 graduated reentry program must provide an approved residence and  
35 living arrangement prior to transfer to home detention.

36 (5) While in the community on home detention as part of the  
37 graduated reentry program, the department must:

38 (a) Require the offender to be placed on electronic home  
39 monitoring;

1 (b) Require the offender to participate in programming and  
2 treatment that the department shall assign based on an offender's  
3 assessed need; and

4 (c) Assign a community corrections officer who will monitor the  
5 offender's compliance with conditions of partial confinement and  
6 programming requirements.

7 (6) The department retains the authority to return any offender  
8 serving partial confinement in the graduated reentry program to total  
9 confinement for any reason including, but not limited to, the  
10 offender's noncompliance with any sentence requirement.

11 (7) The department may issue rental vouchers for a period not to  
12 exceed six months for those transferring to partial confinement under  
13 this section if an approved address cannot be obtained without the  
14 assistance of a voucher.

15 (8) In the selection of offenders to participate in the graduated  
16 reentry program, and in setting, modifying, and enforcing the  
17 requirements of the graduated (~~release~~ [reentry]) reentry program,  
18 the department is deemed to be performing a quasi-judicial function.

19 (9) The department shall publish a monthly report on its website  
20 with the number of offenders who were transferred during the month to  
21 home detention as part of the graduated reentry program. The  
22 department shall submit an annual report by December 1st to the  
23 appropriate committees of the legislature with the number of  
24 offenders who were transferred to home detention as part of the  
25 graduated reentry program during the prior year.

26 **Sec. 2.** RCW 9.94A.728 and 2018 c 166 s 2 are each amended to  
27 read as follows:

28 (1) No person serving a sentence imposed pursuant to this chapter  
29 and committed to the custody of the department shall leave the  
30 confines of the correctional facility or be released prior to the  
31 expiration of the sentence except as follows:

32 (a) An offender may earn early release time as authorized by RCW  
33 9.94A.729;

34 (b) An offender may leave a correctional facility pursuant to an  
35 authorized furlough or leave of absence. In addition, offenders may  
36 leave a correctional facility when in the custody of a corrections  
37 officer or officers;

38 (c) (i) The secretary may authorize an extraordinary medical  
39 placement for an offender when all of the following conditions exist:

1 (A) The offender has a medical condition that is serious and is  
2 expected to require costly care or treatment;

3 (B) The offender poses a low risk to the community because he or  
4 she is currently physically incapacitated due to age or the medical  
5 condition or is expected to be so at the time of release; and

6 (C) It is expected that granting the extraordinary medical  
7 placement will result in a cost savings to the state.

8 (ii) An offender sentenced to death or to life imprisonment  
9 without the possibility of release or parole is not eligible for an  
10 extraordinary medical placement.

11 (iii) The secretary shall require electronic monitoring for all  
12 offenders in extraordinary medical placement unless the electronic  
13 monitoring equipment interferes with the function of the offender's  
14 medical equipment or results in the loss of funding for the  
15 offender's medical care, in which case, an alternative type of  
16 monitoring shall be utilized. The secretary shall specify who shall  
17 provide the monitoring services and the terms under which the  
18 monitoring shall be performed.

19 (iv) The secretary may revoke an extraordinary medical placement  
20 under this subsection (1)(c) at any time.

21 (v) Persistent offenders are not eligible for extraordinary  
22 medical placement;

23 (d) The governor, upon recommendation from the clemency and  
24 pardons board, may grant an extraordinary release for reasons of  
25 serious health problems, senility, advanced age, extraordinary  
26 meritorious acts, or other extraordinary circumstances;

27 (e) No more than the final twelve months of the offender's term  
28 of confinement may be served in partial confinement for aiding the  
29 offender with: Finding work as part of the work release program under  
30 chapter 72.65 RCW; or reestablishing himself or herself in the  
31 community as part of the parenting program in RCW 9.94A.6551. This is  
32 in addition to that period of earned early release time that may be  
33 exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

34 (f) (~~No more than the final six months~~) (i) No more than the  
35 final five months of the offender's term of confinement may be served  
36 in partial confinement as home detention as part of the graduated  
37 reentry program developed by the department under RCW  
38 9.94A.733(1)(a);

39 (ii) For eligible offenders under RCW 9.94A.733(1)(b), after  
40 serving at least four months in total confinement in a state

1 correctional facility, an offender may serve the remaining portion of  
2 the offender's term of confinement in partial confinement as home  
3 detention as part of the graduated reentry program developed by the  
4 department;

5 (g) The governor may pardon any offender;

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

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

12 (j) Notwithstanding any other provisions of this section, an  
13 offender sentenced for a felony crime listed in RCW 9.94A.540 as  
14 subject to a mandatory minimum sentence of total confinement shall  
15 not be released from total confinement before the completion of the  
16 listed mandatory minimum sentence for that felony crime of conviction  
17 unless allowed under RCW 9.94A.540; and

18 (k) Any person convicted of one or more crimes committed prior to  
19 the person's eighteenth birthday may be released from confinement  
20 pursuant to RCW 9.94A.730.

21 (2) Offenders residing in a juvenile correctional facility  
22 placement pursuant to RCW 72.01.410(1)(a) are not subject to the  
23 limitations in this section.

24 NEW SECTION. **Sec. 3.** The changes to restrictions on partial  
25 confinement and the graduated reentry program under sections 1 and 2  
26 of this act apply prospectively and retroactively to persons  
27 currently serving a sentence in any facility or institution either  
28 operated by the state or utilized under contract.

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