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**HOUSE BILL 1640**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representatives Street, Santos, Mena, Doglio, Senn, Reed, Berry, Farivar, Simmons, Cortes, Ryu, Lekanoff, Ramel, Gregerson, Bateman, Pollet, Morgan, Macri, Fosse, and Kloba

Read first time 01/27/23. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to the governor's authority to grant pardons and  
2 commutations; amending RCW 9.94A.565 and 10.01.120; and reenacting  
3 and amending RCW 9.94A.728.

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

5 **Sec. 1.** RCW 9.94A.728 and 2021 c 311 s 19 and 2021 c 266 s 2 are  
6 each reenacted and amended to read as follows:

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

11 (a) An offender may earn early release time as authorized by RCW  
12 9.94A.729;

13 (b) An offender may leave a correctional facility pursuant to an  
14 authorized furlough or leave of absence. In addition, offenders may  
15 leave a correctional facility when in the custody of a corrections  
16 officer or officers;

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

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

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

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

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

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

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

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

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

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

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

37 (ii) For eligible offenders under RCW 9.94A.733(1)(b), after  
38 serving at least four months in total confinement in a state  
39 correctional facility, an offender may serve no more than the final  
40 18 months of the offender's term of confinement in partial

1 confinement as home detention as part of the graduated reentry  
2 program developed by the department;

3 (g) The governor may pardon any offender;

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

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

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

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

19 (2) Notwithstanding any other provision of this section, an  
20 offender entitled to vacation of a conviction or the recalculation of  
21 ~~((his or her))~~ the offender's offender score pursuant to *State v.*  
22 *Blake*, No. 96873-0 (Feb. 25, 2021), may be released from confinement  
23 pursuant to a court order if the offender has already served a period  
24 of confinement that exceeds ~~((his or her))~~ the offender's new  
25 standard range. This provision does not create an independent right  
26 to release from confinement prior to resentencing.

27 (3) Offenders residing in a juvenile correctional facility  
28 placement pursuant to RCW 72.01.410(1)(a) are not subject to the  
29 limitations in this section.

30 **Sec. 2.** RCW 9.94A.565 and 1994 c 1 s 5 are each amended to read  
31 as follows:

32 (1) Nothing in chapter 1, Laws of 1994 shall ever be interpreted  
33 or construed as to reduce or eliminate the power of the governor to  
34 grant a pardon or clemency to any offender ~~((on an individual case-~~  
35 ~~by case basis))~~. However, the people recommend that any offender  
36 subject to total confinement for life without the possibility of  
37 parole not be considered for release until the offender has reached  
38 the age of at least sixty years old and has been judged to be no  
39 longer a threat to society. The people further recommend that sex

1 offenders be held to the utmost scrutiny under this subsection  
2 regardless of age.

3 (2) Nothing in this section shall ever be interpreted or  
4 construed to grant any release for the purpose of reducing prison  
5 overcrowding. Furthermore, the governor shall provide twice yearly  
6 reports on the activities and progress of offenders subject to total  
7 confinement for life without the possibility of parole who are  
8 released through executive action during ~~((his—or—her))~~ the  
9 governor's tenure. These reports shall continue for not less than ten  
10 years after the release of the offender or upon the death of the  
11 released offender.

12 **Sec. 3.** RCW 10.01.120 and 2010 c 8 s 1003 are each amended to  
13 read as follows:

14 Whenever a prisoner has been sentenced to death, the governor  
15 shall have power to commute such sentence to imprisonment for life at  
16 hard labor; and in all cases in which the governor is authorized to  
17 grant pardons or commute sentence of death, ~~((he—or—she))~~ the  
18 governor may, upon the petition of the person convicted, commute a  
19 sentence or grant a pardon, upon such conditions, and with such  
20 restrictions, and under such limitations as ~~((he—or—she))~~ the  
21 governor may think proper; and ~~((he—or—she))~~ the governor may issue  
22 ~~((his—or—her))~~ a warrant to all proper officers to carry into effect  
23 such pardon or commutation, which warrant shall be obeyed and  
24 executed, instead of the sentence, if any, which was originally  
25 given. The governor may also, on good cause shown, grant respites or  
26 reprieves from time to time as ~~((he—or—she))~~ the governor may think  
27 proper. Nothing in this section shall be interpreted to limit the  
28 governor's authority to grant a pardon or commutation for a sentence,  
29 other than a sentence of death, regardless of whether the governor  
30 receives a petition from the person convicted.

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