
HOUSE BILL 2105

State of Washington

58th Legislature

2003 Regular Session

By Representatives Kagi and Darneille

Read first time 02/25/2003. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to ensuring that offender populations do not exceed
2 prison capacity; amending RCW 9.94A.728; reenacting and amending RCW
3 9.94A.728; adding new sections to chapter 43.88C RCW; adding new
4 sections to chapter 9.94A RCW; creating a new section; providing an
5 effective date; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) Some of the primary purposes of the criminal justice system are
9 to:

10 (i) Ensure that the punishment for a criminal offense is
11 proportionate to the seriousness of the offense and the offender's
12 criminal history;

13 (ii) Make frugal use of the state's and local government's
14 resources by concentrating resources on violent offenders and sex
15 offenders who pose the greatest risk to our communities;

16 (iii) Promote respect for the law by providing punishment that is
17 just;

18 (iv) Protect the public;

1 (v) Offer the offender an opportunity to improve himself or
2 herself; and

3 (vi) Reduce the risk of reoffending by offenders in the community;

4 (b) Recent changes in the criminal laws have led to
5 disproportionately long terms of confinement for certain nonviolent
6 offenders and prison overcrowding; and

7 (c) Prison overcrowding:

8 (i) Results in inefficient expenditures of public funds by
9 concentrating too many resources on low risk offenders, and
10 insufficient resources on high risk offenders;

11 (ii) Results in unjust punishment for offenders because of unsafe
12 conditions within prisons;

13 (iii) Endangers the public by preventing the optimal concentration
14 of criminal justice resources on high risk offenders;

15 (iv) Limits the educational, vocational, and treatment
16 opportunities available to an offender and therefore the offender's
17 ability to improve himself or herself; and

18 (v) Increases the risk of reoffending by offenders in the community
19 by decreasing services within the prison environment that can reduce
20 the risk of recidivism.

21 (2) It is therefore the intent of the legislature to:

22 (a) Promote the primary purposes of the criminal justice system and
23 focus resources on sex offenders and violent offenders who pose the
24 greatest risk to our communities by reducing offender populations when
25 such populations exceed the maximum operational capacity of facilities
26 operated by the department of corrections; and

27 (b) Accomplish the reduction by concentrating solely on offenders
28 convicted of certain nonviolent offenses who are close to the end of
29 their sentences.

30 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.88C RCW
31 to read as follows:

32 (1) The caseload forecast council, in consultation with the
33 department of corrections, the sentencing guidelines commission, and
34 the indeterminate sentence review board, shall, by rule, establish a
35 methodology for determining the maximum statewide operating capacity
36 for correctional facilities operated by the department of corrections.

1 The methodology must take into account methods for increasing facility
2 capacity without making improvements or additions to infrastructure.

3 (2) For purposes of this section, "maximum statewide operating
4 capacity for correctional facilities operated by the department of
5 corrections" means the number of offenders that all of the correctional
6 facilities operated by the department of corrections can house at a
7 given time based on space, staff, existing programs, and services.

8 (3) The council shall complete the methodology and report it to the
9 legislature no later than December 1, 2003.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.88C RCW
11 to read as follows:

12 (1) Using the methodology developed under section 2 of this act,
13 the caseload forecast council shall determine the maximum statewide
14 operating capacity for correctional facilities operated by the
15 department of corrections for the fiscal year beginning July 1, 2004,
16 and annually thereafter. The council shall report its determination of
17 the maximum operating capacity to the legislature and the sentencing
18 guidelines commission no later than July 8th. The report must include
19 a copy of the methodology developed under section 2 of this act and a
20 description of how the council used the methodology to make its
21 determination.

22 (2) If a caseload forecast prepared under RCW 43.88C.020 indicates
23 that the number of offenders incarcerated in correctional facilities
24 operated by the department of corrections will exceed the most recent
25 determination of the maximum statewide operating capacity for
26 correctional facilities operated by the department of corrections
27 determined under subsection (1) of this section, the council shall
28 notify the sentencing guidelines commission and the department of
29 corrections within seven days of adopting the forecast.

30 (3) The notification under subsection (2) of this section must
31 include:

32 (a) A copy of the council's most recent determination of the
33 maximum statewide operating capacity for correctional facilities
34 operated by the department of corrections;

35 (b) A copy of the forecast indicating that the capacity will be
36 exceeded; and

1 (c) The estimated number of offenders currently incarcerated by
2 which the offender population must be reduced in order for the capacity
3 not to be exceeded.

4 (4) The council's findings and determinations under this section
5 are not subject to appeal under chapter 34.05 RCW.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.94A RCW
7 to read as follows:

8 (1) Upon receipt of the notification from the caseload forecast
9 council under section 3(2) of this act, the commission shall certify
10 whether the information included in the council's notification was
11 correctly determined.

12 (2) The commission shall transmit a copy of its certification to
13 the department and the council within fourteen days of receipt of
14 notification from the council.

15 (3) If the commission denies certification, it shall inform the
16 council of its decision and the reasons therefor in writing within
17 fourteen days of receipt of notification from the council. The council
18 may revise the information in the notification and resubmit it to the
19 commission for approval under this section.

20 (4) The commission's certification decision is not subject to
21 appeal under chapter 34.05 RCW.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.94A RCW
23 to read as follows:

24 (1) The department shall perform a risk assessment of every
25 offender who: (a) Was committed to a correctional facility operated by
26 the department for an offense that is not a violent offense, sex
27 offense, offense sentenced under RCW 9.94A.660, or crime against a
28 person as defined in this chapter, and (b) has a criminal history that
29 does not include a violent offense, sex offense, or crime against a
30 person as defined in this chapter. The department shall classify each
31 offender in one of at least four categories between highest and lowest
32 risk.

33 (2) Within fourteen days of the receipt of certification from the
34 commission under section 4(2) of this act, the department shall develop
35 a list of qualified offenders. The number of qualified offenders on
36 the list may not exceed the estimate developed by the caseload forecast

1 council under section 3(3)(c) of this act. If the number of qualified
2 offenders committed to correctional facilities operated by the
3 department exceeds the estimate, the department shall give priority to
4 offenders whose release dates are closest in time to the date the
5 certification from the commission under section 4(2) of this act was
6 received.

7 (3) Within fourteen days of the development of the list of
8 qualified offenders under subsection (2) of this section, the
9 department shall release the offenders on the list.

10 (4) For purposes of this act, "qualified offender" means an
11 offender:

12 (a) Committed to a correctional facility operated by the department
13 for an offense that is not a violent offense, sex offense, offense
14 sentenced under RCW 9.94A.660, or crime against a person as defined in
15 this chapter;

16 (b) Who has a criminal history that does not include a violent
17 offense, sex offense, or crime against a person as defined in this
18 chapter; and

19 (c) Who is classified under subsection (1) of this section in any
20 risk category other than the two highest categories.

21 (5) The classification of offenders under subsection (1) of this
22 section, the development of the list under subsection (2) of this
23 section, and the release of offenders under subsection (3) of this
24 section:

25 (a) Are not subject to appeal under chapter 34.05 RCW;

26 (b) Do not create a vested right to early release for any offender;
27 and

28 (c) May not be the basis for any civil or criminal action against
29 the state, the department, or any state employee.

30 **Sec. 6.** RCW 9.94A.728 and 2002 c 50 s 2 are each amended to read
31 as follows:

32 No person serving a sentence imposed pursuant to this chapter and
33 committed to the custody of the department shall leave the confines of
34 the correctional facility or be released prior to the expiration of the
35 sentence except as follows:

36 (1) Except as otherwise provided for in subsection (2) of this
37 section, the term of the sentence of an offender committed to a

1 correctional facility operated by the department may be reduced by
2 earned release time in accordance with procedures that shall be
3 developed and promulgated by the correctional agency having
4 jurisdiction in which the offender is confined. The earned release
5 time shall be for good behavior and good performance, as determined by
6 the correctional agency having jurisdiction. The correctional agency
7 shall not credit the offender with earned release credits in advance of
8 the offender actually earning the credits. Any program established
9 pursuant to this section shall allow an offender to earn early release
10 credits for presentence incarceration. If an offender is transferred
11 from a county jail to the department, the administrator of a county
12 jail facility shall certify to the department the amount of time spent
13 in custody at the facility and the amount of earned release time. An
14 offender who has been convicted of a felony committed after July 23,
15 1995, that involves any applicable deadly weapon enhancements under RCW
16 9.94A.510 (3) or (4), or both, shall not receive any good time credits
17 or earned release time for that portion of his or her sentence that
18 results from any deadly weapon enhancements. In the case of an
19 offender convicted of a serious violent offense, or a sex offense that
20 is a class A felony, committed on or after July 1, 1990, the aggregate
21 earned release time may not exceed fifteen percent of the sentence. In
22 no other case shall the aggregate earned release time exceed one-third
23 of the total sentence;

24 (2)(a) A person convicted of a sex offense or an offense
25 categorized as a serious violent offense, assault in the second degree,
26 vehicular homicide, vehicular assault, assault of a child in the second
27 degree, any crime against persons where it is determined in accordance
28 with RCW 9.94A.602 that the offender or an accomplice was armed with a
29 deadly weapon at the time of commission, or any felony offense under
30 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
31 eligible, in accordance with a program developed by the department, for
32 transfer to community custody status in lieu of earned release time
33 pursuant to subsection (1) of this section;

34 (b) A person convicted of a sex offense, a violent offense, any
35 crime against persons under RCW 9.94A.411(2), or a felony offense under
36 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
37 become eligible, in accordance with a program developed by the

1 department, for transfer to community custody status in lieu of earned
2 release time pursuant to subsection (1) of this section;

3 (c) The department shall, as a part of its program for release to
4 the community in lieu of earned release, require the offender to
5 propose a release plan that includes an approved residence and living
6 arrangement. All offenders with community placement or community
7 custody terms eligible for release to community custody status in lieu
8 of earned release shall provide an approved residence and living
9 arrangement prior to release to the community;

10 (d) The department may deny transfer to community custody status in
11 lieu of earned release time pursuant to subsection (1) of this section
12 if the department determines an offender's release plan, including
13 proposed residence location and living arrangements, may violate the
14 conditions of the sentence or conditions of supervision, place the
15 offender at risk to violate the conditions of the sentence, place the
16 offender at risk to reoffend, or present a risk to victim safety or
17 community safety. The department's authority under this section is
18 independent of any court-ordered condition of sentence or statutory
19 provision regarding conditions for community custody or community
20 placement;

21 (3) An offender may leave a correctional facility pursuant to an
22 authorized furlough or leave of absence. In addition, offenders may
23 leave a correctional facility when in the custody of a corrections
24 officer or officers;

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

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

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

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

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

37 (c) The secretary shall require electronic monitoring for all
38 offenders in extraordinary medical placement unless the electronic

1 monitoring equipment interferes with the function of the offender's
2 medical equipment or results in the loss of funding for the offender's
3 medical care. The secretary shall specify who shall provide the
4 monitoring services and the terms under which the monitoring shall be
5 performed.

6 (d) The secretary may revoke an extraordinary medical placement
7 under this subsection at any time.

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

12 (6) No more than the final six months of the sentence may be served
13 in partial confinement designed to aid the offender in finding work and
14 reestablishing himself or herself in the community;

15 (7) The governor may pardon any offender;

16 (8) The department may release an offender from confinement any
17 time within ten days before a release date calculated under this
18 section; ~~((and))~~

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

22 (10) An offender may be released by the department under section 5
23 of this act. An offender released under this subsection shall be on
24 community custody status for the difference between the date of release
25 under section 5 of this act and the expiration of the offender's term
26 of confinement imposed by the court, subject to conditions imposed by
27 the department. For an offender released from custody imposed because
28 of a conviction for an offense under chapter 69.50 or 69.52 RCW, the
29 community custody must include affirmative conditions relating to drug
30 treatment.

31 Notwithstanding any other provisions of this section, an offender
32 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
33 mandatory minimum sentence of total confinement shall not be released
34 from total confinement before the completion of the listed mandatory
35 minimum sentence for that felony crime of conviction unless allowed
36 under RCW 9.94A.540, however persistent offenders are not eligible for
37 extraordinary medical placement.

1 **Sec. 7.** RCW 9.94A.728 and 2002 c 290 s 21 and 2002 c 50 s 2 are
2 each reenacted and amended to read as follows:

3 No person serving a sentence imposed pursuant to this chapter and
4 committed to the custody of the department shall leave the confines of
5 the correctional facility or be released prior to the expiration of the
6 sentence except as follows:

7 (1) Except as otherwise provided for in subsection (2) of this
8 section, the term of the sentence of an offender committed to a
9 correctional facility operated by the department may be reduced by
10 earned release time in accordance with procedures that shall be
11 developed and promulgated by the correctional agency having
12 jurisdiction in which the offender is confined. The earned release
13 time shall be for good behavior and good performance, as determined by
14 the correctional agency having jurisdiction. The correctional agency
15 shall not credit the offender with earned release credits in advance of
16 the offender actually earning the credits. Any program established
17 pursuant to this section shall allow an offender to earn early release
18 credits for presentence incarceration. If an offender is transferred
19 from a county jail to the department, the administrator of a county
20 jail facility shall certify to the department the amount of time spent
21 in custody at the facility and the amount of earned release time. An
22 offender who has been convicted of a felony committed after July 23,
23 1995, that involves any applicable deadly weapon enhancements under RCW
24 9.94A.533 (3) or (4), or both, shall not receive any good time credits
25 or earned release time for that portion of his or her sentence that
26 results from any deadly weapon enhancements. In the case of an
27 offender convicted of a serious violent offense, or a sex offense that
28 is a class A felony, committed on or after July 1, 1990, the aggregate
29 earned release time may not exceed fifteen percent of the sentence. In
30 no other case shall the aggregate earned release time exceed one-third
31 of the total sentence;

32 (2)(a) A person convicted of a sex offense or an offense
33 categorized as a serious violent offense, assault in the second degree,
34 vehicular homicide, vehicular assault, assault of a child in the second
35 degree, any crime against persons where it is determined in accordance
36 with RCW 9.94A.602 that the offender or an accomplice was armed with a
37 deadly weapon at the time of commission, or any felony offense under
38 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become

1 eligible, in accordance with a program developed by the department, for
2 transfer to community custody status in lieu of earned release time
3 pursuant to subsection (1) of this section;

4 (b) A person convicted of a sex offense, a violent offense, any
5 crime against persons under RCW 9.94A.411(2), or a felony offense under
6 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
7 become eligible, in accordance with a program developed by the
8 department, for transfer to community custody status in lieu of earned
9 release time pursuant to subsection (1) of this section;

10 (c) The department shall, as a part of its program for release to
11 the community in lieu of earned release, require the offender to
12 propose a release plan that includes an approved residence and living
13 arrangement. All offenders with community placement or community
14 custody terms eligible for release to community custody status in lieu
15 of earned release shall provide an approved residence and living
16 arrangement prior to release to the community;

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

28 (3) An offender may leave a correctional facility pursuant to an
29 authorized furlough or leave of absence. In addition, offenders may
30 leave a correctional facility when in the custody of a corrections
31 officer or officers;

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

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

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

38 and

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

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

6 (c) The secretary shall require electronic monitoring for all
7 offenders in extraordinary medical placement unless the electronic
8 monitoring equipment interferes with the function of the offender's
9 medical equipment or results in the loss of funding for the offender's
10 medical care. The secretary shall specify who shall provide the
11 monitoring services and the terms under which the monitoring shall be
12 performed.

13 (d) The secretary may revoke an extraordinary medical placement
14 under this subsection at any time.

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

19 (6) No more than the final six months of the sentence may be served
20 in partial confinement designed to aid the offender in finding work and
21 reestablishing himself or herself in the community;

22 (7) The governor may pardon any offender;

23 (8) The department may release an offender from confinement any
24 time within ten days before a release date calculated under this
25 section; ((and))

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

29 (10) An offender may be released by the department under section 5
30 of this act. An offender released under this subsection shall be on
31 community custody status for the difference between the date of release
32 under section 5 of this act and the expiration of the offender's term
33 of confinement imposed by the court, subject to conditions imposed by
34 the department. For an offender released from custody imposed because
35 of a conviction for an offense under chapter 69.50 or 69.52 RCW, the
36 community custody must include affirmative conditions relating to drug
37 treatment.

1 Notwithstanding any other provisions of this section, an offender
2 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
3 mandatory minimum sentence of total confinement shall not be released
4 from total confinement before the completion of the listed mandatory
5 minimum sentence for that felony crime of conviction unless allowed
6 under RCW 9.94A.540, however persistent offenders are not eligible for
7 extraordinary medical placement.

8 NEW SECTION. **Sec. 8.** Section 6 of this act expires July 1, 2004.

9 NEW SECTION. **Sec. 9.** Section 7 of this act takes effect July 1,
10 2004.

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