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HOUSE BILL 2652

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State of Washington

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By Representatives O'Brien, Ahern, Kagi, Darneille, Simpson, G.,  
Campbell and Lovick

Read first time 01/19/2004. Referred to Committee on Criminal  
Justice & Corrections.

1 AN ACT Relating to making persons convicted of felony hit and run  
2 ineligible for fifty percent earned release credits; amending RCW  
3 9.94A.728; creating a new section; and declaring an emergency.

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

5 **Sec. 1.** RCW 9.94A.728 and 2003 c 379 s 1 are each amended to read  
6 as follows:

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

11 (1) Except as otherwise provided for in subsection (2) of this  
12 section, the term of the sentence of an offender committed to a  
13 correctional facility operated by the department may be reduced by  
14 earned release time in accordance with procedures that shall be  
15 developed and promulgated by the correctional agency having  
16 jurisdiction in which the offender is confined. The earned release  
17 time shall be for good behavior and good performance, as determined by  
18 the correctional agency having jurisdiction. The correctional agency  
19 shall not credit the offender with earned release credits in advance of

1 the offender actually earning the credits. Any program established  
2 pursuant to this section shall allow an offender to earn early release  
3 credits for presentence incarceration. If an offender is transferred  
4 from a county jail to the department, the administrator of a county  
5 jail facility shall certify to the department the amount of time spent  
6 in custody at the facility and the amount of earned release time. An  
7 offender who has been convicted of a felony committed after July 23,  
8 1995, that involves any applicable deadly weapon enhancements under RCW  
9 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
10 or earned release time for that portion of his or her sentence that  
11 results from any deadly weapon enhancements.

12 (a) In the case of an offender convicted of a serious violent  
13 offense, or a sex offense that is a class A felony, committed on or  
14 after July 1, 1990, and before July 1, 2003, the aggregate earned  
15 release time may not exceed fifteen percent of the sentence. In the  
16 case of an offender convicted of a serious violent offense, or a sex  
17 offense that is a class A felony, committed on or after July 1, 2003,  
18 the aggregate earned release time may not exceed ten percent of the  
19 sentence.

20 (b)(i) In the case of an offender who qualifies under (b)(ii) of  
21 this subsection, the aggregate earned release time may not exceed fifty  
22 percent of the sentence.

23 (ii) An offender is qualified to earn up to fifty percent of  
24 aggregate earned release time under this subsection (1)(b) if he or  
25 she:

26 (A) Is classified in one of the two lowest risk categories under  
27 (b)(iii) of this subsection;

28 (B) Is not confined pursuant to a sentence for:

29 (I) A sex offense;

30 (II) A violent offense;

31 (III) A crime against persons as defined in RCW 9.94A.411;

32 (IV) A felony that is domestic violence as defined in RCW  
33 10.99.020;

34 (V) A violation of RCW 9A.52.025 (residential burglary);

35 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
36 violate, RCW 69.50.401 by manufacture or delivery or possession with  
37 intent to deliver methamphetamine; ((~~or~~))

1 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
2 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
3 (VIII) A violation of RCW 46.52.020(4)(a) (hit and run - death); or  
4 (IX) A violation of RCW 46.52.020(4)(b) (hit and run - injury); and  
5 (C) Has no prior conviction for:  
6 (I) A sex offense;  
7 (II) A violent offense;  
8 (III) A crime against persons as defined in RCW 9.94A.411;  
9 (IV) A felony that is domestic violence as defined in RCW  
10 10.99.020;  
11 (V) A violation of RCW 9A.52.025 (residential burglary);  
12 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
13 violate, RCW 69.50.401 by manufacture or delivery or possession with  
14 intent to deliver methamphetamine; or  
15 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
16 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).  
17 (iii) For purposes of determining an offender's eligibility under  
18 this subsection (1)(b), the department shall perform a risk assessment  
19 of every offender committed to a correctional facility operated by the  
20 department who has no current or prior conviction for a sex offense, a  
21 violent offense, a crime against persons as defined in RCW 9.94A.411,  
22 a felony that is domestic violence as defined in RCW 10.99.020, a  
23 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
24 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
25 manufacture or delivery or possession with intent to deliver  
26 methamphetamine, or a violation of, or an attempt, solicitation, or  
27 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
28 substance to a minor). The department must classify each assessed  
29 offender in one of four risk categories between highest and lowest  
30 risk.  
31 (iv) The department shall recalculate the earned release time and  
32 reschedule the expected release dates for each qualified offender under  
33 this subsection (1)(b).  
34 (v) This subsection (1)(b) applies retroactively to eligible  
35 offenders serving terms of total confinement in a state correctional  
36 facility as of July 1, 2003.  
37 (vi) This subsection (1)(b) does not apply to offenders convicted  
38 after July 1, 2010.

1 (c) In no other case shall the aggregate earned release time exceed  
2 one-third of the total sentence;

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

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

19 (c) The department shall, as a part of its program for release to  
20 the community in lieu of earned release, require the offender to  
21 propose a release plan that includes an approved residence and living  
22 arrangement. All offenders with community placement or community  
23 custody terms eligible for release to community custody status in lieu  
24 of earned release shall provide an approved residence and living  
25 arrangement prior to release to the community;

26 (d) The department may deny transfer to community custody status in  
27 lieu of earned release time pursuant to subsection (1) of this section  
28 if the department determines an offender's release plan, including  
29 proposed residence location and living arrangements, may violate the  
30 conditions of the sentence or conditions of supervision, place the  
31 offender at risk to violate the conditions of the sentence, place the  
32 offender at risk to reoffend, or present a risk to victim safety or  
33 community safety. The department's authority under this section is  
34 independent of any court-ordered condition of sentence or statutory  
35 provision regarding conditions for community custody or community  
36 placement;

37 (3) An offender may leave a correctional facility pursuant to an

1 authorized furlough or leave of absence. In addition, offenders may  
2 leave a correctional facility when in the custody of a corrections  
3 officer or officers;

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

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

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

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

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

16 (c) The secretary shall require electronic monitoring for all  
17 offenders in extraordinary medical placement unless the electronic  
18 monitoring equipment interferes with the function of the offender's  
19 medical equipment or results in the loss of funding for the offender's  
20 medical care. The secretary shall specify who shall provide the  
21 monitoring services and the terms under which the monitoring shall be  
22 performed.

23 (d) The secretary may revoke an extraordinary medical placement  
24 under this subsection at any time;

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

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

32 (7) The governor may pardon any offender;

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

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

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. 2.** This act applies only to offenders who have  
9 not received the fifty percent earned release credit under RCW  
10 9.94A.728(1)(b) by the effective date of this act. Nothing in this act  
11 shall be interpreted to require the department to reincarcerate  
12 offenders who were released under RCW 9.94A.728(1)(b) prior to the  
13 effective date of this act.

14           NEW SECTION.   **Sec. 3.** This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of the  
16 state government and its existing public institutions, and takes effect  
17 immediately.

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