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HOUSE BILL 1993

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Flannigan, Walsh, Dunshee, Lantz, Darneille, Appleton, Grant, Lovick and O'Brien

Read first time 02/14/2005.      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; adding new sections to chapter  
3 43.88C RCW; adding new sections to chapter 9.94A RCW; and creating new  
4 sections.

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

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

7            (a) Recent changes in criminal laws and enforcement have led to (i)  
8 the imprisonment of increasing numbers of nonviolent offenders, (ii)  
9 longer sentences, (iii) prison overcrowding, (iv) transfer of prisoners  
10 to public and private prisons in other states, and (v) increasing  
11 pressure to build and maintain new prisons in Washington, at great  
12 expense to taxpayers, and at the sacrifice of other needed programs,  
13 services, and projects;

14            (b) Prison overcrowding:

15            (i) Results in inefficient expenditures of public funds by  
16 utilizing scarce resources on low-risk offenders, and insufficient  
17 resources on high-risk offenders;

18            (ii) Results in unjust punishment for offenders and an unfair  
19 environment for staff because of unsafe conditions within prisons;

1 (iii) Endangers the public by preventing the effective  
2 concentration of criminal justice resources on high-risk offenders;

3 (iv) Limits the educational, vocational, and treatment  
4 opportunities available to an offender and reduces the offender's  
5 ability to improve, for the benefit of himself or herself, and for  
6 community well-being and safety; and

7 (v) Increases the risk of reoffending in the community by  
8 decreasing services within the prisons and in the community that can  
9 reduce the risk of recidivism.

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

11 (a) Focus resources on sex offenders and violent offenders who pose  
12 the greatest risk to our communities, by reducing offender populations  
13 when such populations exceed the maximum operational capacity of  
14 facilities operated by the department of corrections; and

15 (b) Accomplish the reduction by releasing to community supervision  
16 solely low-risk offenders who have been convicted of certain nonviolent  
17 offenses and who are closest to the end of their sentences.

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

20 (1) The caseload forecast council, in consultation with the  
21 department of corrections, the sentencing guidelines commission, and  
22 the indeterminate sentence review board, shall, by rule, establish a  
23 methodology for determining the maximum statewide operating capacity  
24 for correctional facilities operated by the department of corrections.  
25 The methodology must take into account methods for increasing facility  
26 capacity without making improvements or additions to infrastructure.

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

32 (3) The council shall complete the methodology and report it to the  
33 legislature no later than December 1, 2005.

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

36 (1) Using the methodology developed under section 2 of this act,

1 the caseload forecast council shall determine the maximum statewide  
2 operating capacity for correctional facilities operated by the  
3 department of corrections for the fiscal year beginning July 1, 2006,  
4 and annually thereafter. The council shall report its determination of  
5 the maximum operating capacity to the legislature and the sentencing  
6 guidelines commission no later than July 8th. The report must include  
7 a copy of the methodology developed under section 2 of this act and a  
8 description of how the council used the methodology to make its  
9 determination.

10 (2) If a caseload forecast prepared under RCW 43.88C.020 indicates  
11 that the number of offenders incarcerated in correctional facilities  
12 operated by the department of corrections will exceed the most recent  
13 determination of the maximum statewide operating capacity for  
14 correctional facilities operated by the department of corrections  
15 determined under subsection (1) of this section, the council shall  
16 notify the sentencing guidelines commission and the department of  
17 corrections within seven days of adopting the forecast.

18 (3) The notification under subsection (2) of this section must  
19 include:

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

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

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

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

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

32 (1) Upon receipt of the notification from the caseload forecast  
33 council under section 3(2) of this act, the sentencing guidelines  
34 commission shall certify whether or not the information included in the  
35 council's notification was correctly determined.

36 (2) The commission shall transmit a copy of its certification to

1 the department and the council within fourteen days of receipt of  
2 notification from the council. The commission's certification decision  
3 is not subject to appeal under chapter 34.05 RCW.

4 (3) If the commission certifies that the information included in  
5 the council's notification was incorrectly determined, it shall inform  
6 the council of its decision and the reasons therefor in writing within  
7 fourteen days of receipt of notification from the council. The council  
8 shall then review and may revise, if appropriate, the information in  
9 the notification and shall resubmit it to the commission with an  
10 explanation. Upon receipt of the resubmission by the council, the  
11 commission has fourteen days to provide further comments, after which  
12 the council shall adopt the final form of its findings and  
13 determinations and shall promptly transmit them to the department of  
14 corrections for utilization as provided in section 5 of this act.

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

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

26 (2) Within fourteen days of the receipt of certification from the  
27 commission under section 4(2) of this act, or final findings and  
28 determinations under section 4(3) of this act, the department shall  
29 develop a list of qualified offenders. The number of qualified  
30 offenders on the list may not exceed the estimate developed by the  
31 caseload forecast council under section 3(3)(c) of this act. If the  
32 number of qualified offenders committed to correctional facilities  
33 operated by the department exceeds the estimate, the department shall  
34 give priority to those offenders in the lowest risk category whose  
35 release dates are closest in time to the date the certification from  
36 the commission under section 4(2) of this act was received.

1 (3) Within fourteen days of the development of the list of  
2 qualified offenders under subsection (2) of this section, the  
3 department shall release to community supervision the offenders on the  
4 list in the priority provided in this section.

5 (4) For purposes of this act, "qualified offender" means an  
6 offender:

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

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

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

16 (5) The classification of offenders under subsection (1) of this  
17 section, the development of the list under subsection (2) of this  
18 section, and the release of offenders under subsection (3) of this  
19 section:

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

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

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

25 (6) Notwithstanding any other provision of law, the department  
26 shall provide community supervision of any offenders released under  
27 this section until their normal release dates, including electronic  
28 supervision as determined appropriate by the department.

29 **Sec. 6.** RCW 9.94A.728 and 2004 c 176 s 6 are each amended to read  
30 as follows:

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

35 (1) Except as otherwise provided for in subsection (2) of this  
36 section, the term of the sentence of an offender committed to a  
37 correctional facility operated by the department may be reduced by

1 earned release time in accordance with procedures that shall be  
2 developed and promulgated by the correctional agency having  
3 jurisdiction in which the offender is confined. The earned release  
4 time shall be for good behavior and good performance, as determined by  
5 the correctional agency having jurisdiction. The correctional agency  
6 shall not credit the offender with earned release credits in advance of  
7 the offender actually earning the credits. Any program established  
8 pursuant to this section shall allow an offender to earn early release  
9 credits for presentence incarceration. If an offender is transferred  
10 from a county jail to the department, the administrator of a county  
11 jail facility shall certify to the department the amount of time spent  
12 in custody at the facility and the amount of earned release time. An  
13 offender who has been convicted of a felony committed after July 23,  
14 1995, that involves any applicable deadly weapon enhancements under RCW  
15 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
16 or earned release time for that portion of his or her sentence that  
17 results from any deadly weapon enhancements.

18 (a) In the case of an offender convicted of a serious violent  
19 offense, or a sex offense that is a class A felony, committed on or  
20 after July 1, 1990, and before July 1, 2003, the aggregate earned  
21 release time may not exceed fifteen percent of the sentence. In the  
22 case of an offender convicted of a serious violent offense, or a sex  
23 offense that is a class A felony, committed on or after July 1, 2003,  
24 the aggregate earned release time may not exceed ten percent of the  
25 sentence.

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

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

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

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

35 (I) A sex offense;

36 (II) A violent offense;

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

1 (IV) A felony that is domestic violence as defined in RCW  
2 10.99.020;

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

4 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
5 violate, RCW 69.50.401 by manufacture or delivery or possession with  
6 intent to deliver methamphetamine; or

7 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
8 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
9 and

10 (C) Has no prior conviction for:

11 (I) A sex offense;

12 (II) A violent offense;

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

14 (IV) A felony that is domestic violence as defined in RCW  
15 10.99.020;

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

17 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
18 violate, RCW 69.50.401 by manufacture or delivery or possession with  
19 intent to deliver methamphetamine; or

20 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
21 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).

22 (iii) For purposes of determining an offender's eligibility under  
23 this subsection (1)(b), the department shall perform a risk assessment  
24 of every offender committed to a correctional facility operated by the  
25 department who has no current or prior conviction for a sex offense, a  
26 violent offense, a crime against persons as defined in RCW 9.94A.411,  
27 a felony that is domestic violence as defined in RCW 10.99.020, a  
28 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
29 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
30 manufacture or delivery or possession with intent to deliver  
31 methamphetamine, or a violation of, or an attempt, solicitation, or  
32 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
33 substance to a minor). The department must classify each assessed  
34 offender in one of four risk categories between highest and lowest  
35 risk.

36 (iv) The department shall recalculate the earned release time and  
37 reschedule the expected release dates for each qualified offender under  
38 this subsection (1)(b).

1 (v) This subsection (1)(b) applies retroactively to eligible  
2 offenders serving terms of total confinement in a state correctional  
3 facility as of July 1, 2003.

4 (vi) This subsection (1)(b) does not apply to offenders convicted  
5 after July 1, 2010.

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

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

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

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

31 (d) The department may deny transfer to community custody status in  
32 lieu of earned release time pursuant to subsection (1) of this section  
33 if the department determines an offender's release plan, including  
34 proposed residence location and living arrangements, may violate the  
35 conditions of the sentence or conditions of supervision, place the  
36 offender at risk to violate the conditions of the sentence, place the  
37 offender at risk to reoffend, or present a risk to victim safety or  
38 community safety. The department's authority under this section is



1 independent of any court-ordered condition of sentence or statutory  
2 provision regarding conditions for community custody or community  
3 placement;

4 (e) An offender serving a term of confinement imposed under RCW  
5 9.94A.670(4)(a) is not eligible for earned release credits under this  
6 section;

7 (3) An offender may leave a correctional facility pursuant to an  
8 authorized furlough or leave of absence. In addition, offenders may  
9 leave a correctional facility when in the custody of a corrections  
10 officer or officers;

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

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

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

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

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

23 (c) The secretary shall require electronic monitoring for all  
24 offenders in extraordinary medical placement unless the electronic  
25 monitoring equipment interferes with the function of the offender's  
26 medical equipment or results in the loss of funding for the offender's  
27 medical care. The secretary shall specify who shall provide the  
28 monitoring services and the terms under which the monitoring shall be  
29 performed.

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

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

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

1 (7) The governor may pardon any offender;

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

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

8 (10) An offender may be released by the department under section 5  
9 of this act. An offender released under this subsection shall be on  
10 community custody status for the difference between the date of release  
11 under section 5 of this act and the expiration of the offender's term  
12 of confinement imposed by the court, subject to conditions imposed by  
13 the department. For an offender released from custody imposed because  
14 of a conviction for an offense under chapter 69.50 or 69.52 RCW, the  
15 community custody must include affirmative conditions relating to drug  
16 treatment.

17 Notwithstanding any other provisions of this section, an offender  
18 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a  
19 mandatory minimum sentence of total confinement shall not be released  
20 from total confinement before the completion of the listed mandatory  
21 minimum sentence for that felony crime of conviction unless allowed  
22 under RCW 9.94A.540, however persistent offenders are not eligible for  
23 extraordinary medical placement.

24 NEW SECTION. Sec. 7. This act shall be known as the responsible  
25 reduction to capacity act of 2005.

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