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HOUSE BILL 2200

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State of Washington

59th Legislature

2005 Regular Session

By Representatives O'Brien, Darneille, Kagi and Upthegrove

Read first time 02/23/2005. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to earned release credit; amending RCW 9.94A.728  
2 and 9.94A.728; providing an effective date; providing an expiration  
3 date; 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 and

4 (C) Has no prior conviction for:

5 (I) A sex offense;

6 (II) A violent offense;

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

8 (IV) A felony that is domestic violence as defined in RCW  
9 10.99.020;

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

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

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

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

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

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

36 (vi) This subsection (1)(b) does not apply to offenders convicted  
37 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; and

1       (10) The secretary may grant up to thirty days earned release  
2 credit, in addition to credit earned otherwise under this section, to  
3 any offender who:

4       (a) Is housed, immediately prior to release, in a minimum security  
5 correctional facility as defined by the department;

6       (b) Has less than twelve months of total confinement time remaining  
7 in the offender's sentence; and

8       (c) Has successfully completed all training, physical ability  
9 testing, and a minimum of six months' continuous employment in a work  
10 crew supervised by the department of natural resources.

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

18       **Sec. 2.** RCW 9.94A.728 and 2004 c 176 s 6 are each amended to read  
19 as follows:

20       No person serving a sentence imposed pursuant to this chapter and  
21 committed to the custody of the department shall leave the confines of  
22 the correctional facility or be released prior to the expiration of the  
23 sentence except as follows:

24       (1) Except as otherwise provided for in subsection (2) of this  
25 section, the term of the sentence of an offender committed to a  
26 correctional facility operated by the department may be reduced by  
27 earned release time in accordance with procedures that shall be  
28 developed and promulgated by the correctional agency having  
29 jurisdiction in which the offender is confined. The earned release  
30 time shall be for good behavior and good performance, as determined by  
31 the correctional agency having jurisdiction. The correctional agency  
32 shall not credit the offender with earned release credits in advance of  
33 the offender actually earning the credits. Any program established  
34 pursuant to this section shall allow an offender to earn early release  
35 credits for presentence incarceration. If an offender is transferred  
36 from a county jail to the department, the administrator of a county  
37 jail facility shall certify to the department the amount of time spent

1 in custody at the facility and the amount of earned release time. An  
2 offender who has been convicted of a felony committed after July 23,  
3 1995, that involves any applicable deadly weapon enhancements under RCW  
4 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
5 or earned release time for that portion of his or her sentence that  
6 results from any deadly weapon enhancements.

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

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

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

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

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

24 (I) A sex offense;

25 (II) A violent offense;

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

27 (IV) A felony that is domestic violence as defined in RCW  
28 10.99.020;

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

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

33 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
34 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
35 and

36 (C) Has no prior conviction for:

37 (I) A sex offense;

38 (II) A violent offense;

1 (III) A crime against persons as defined in RCW 9.94A.411;  
2 (IV) A felony that is domestic violence as defined in RCW  
3 10.99.020;  
4 (V) A violation of RCW 9A.52.025 (residential burglary);  
5 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
6 violate, RCW 69.50.401 by manufacture or delivery or possession with  
7 intent to deliver methamphetamine; or  
8 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
9 violate, RCW 69.50.406 (delivery of a controlled substance to a minor).  
10 (iii) For purposes of determining an offender's eligibility under  
11 this subsection (1)(b), the department shall perform a risk assessment  
12 of every offender committed to a correctional facility operated by the  
13 department who has no current or prior conviction for a sex offense, a  
14 violent offense, a crime against persons as defined in RCW 9.94A.411,  
15 a felony that is domestic violence as defined in RCW 10.99.020, a  
16 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
17 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
18 manufacture or delivery or possession with intent to deliver  
19 methamphetamine, or a violation of, or an attempt, solicitation, or  
20 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
21 substance to a minor). The department must classify each assessed  
22 offender in one of four risk categories between highest and lowest  
23 risk.  
24 (iv) The department shall recalculate the earned release time and  
25 reschedule the expected release dates for each qualified offender under  
26 this subsection (1)(b).  
27 (v) This subsection (1)(b) applies retroactively to eligible  
28 offenders serving terms of total confinement in a state correctional  
29 facility as of July 1, 2003.  
30 (vi) This subsection (1)(b) does not apply to offenders convicted  
31 after July 1, 2010.  
32 (c) In no other case shall the aggregate earned release time exceed  
33 one-third of the total sentence;  
34 (2)(a) A person convicted of a sex offense or an offense  
35 categorized as a serious violent offense, assault in the second degree,  
36 vehicular homicide, vehicular assault, assault of a child in the second  
37 degree, any crime against persons where it is determined in accordance  
38 with RCW 9.94A.602 that the offender or an accomplice was armed with a

1 deadly weapon at the time of commission, or any felony offense under  
2 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become  
3 eligible, in accordance with a program developed by the department, for  
4 transfer to community custody status in lieu of earned release time  
5 pursuant to subsection (1) of this section;

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

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

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

30 (e) An offender serving a term of confinement imposed under RCW  
31 9.94A.670(4)(a) is not eligible for earned release credits under this  
32 section;

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

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

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

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

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

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

11 (c) 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 offender's  
15 medical care. The secretary shall specify who shall provide the  
16 monitoring services and the terms under which the monitoring shall be  
17 performed.

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

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

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

27 (7) The governor may pardon any offender;

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

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

34 (10) The secretary may grant up to thirty days earned release  
35 credit, in addition to credit earned otherwise under this section, to  
36 any offender who:

37 (a) Is housed, immediately prior to release, in a minimum security  
38 correctional facility as defined by the department;

1       (b) Has less than twelve months of total confinement time remaining  
2 in the offender's sentence; and

3       (c) Has successfully completed all training, physical ability  
4 testing, and a minimum of six months' continuous employment in a work  
5 crew supervised by the department of natural resources.

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

13       NEW SECTION. Sec. 3. Section 1 of this act expires July 1, 2005.

14       NEW SECTION. Sec. 4. 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, except for section 2 of this act, which takes effect July  
18 1, 2005.

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