
SENATE BILL 5915

State of Washington

59th Legislature

2005 Regular Session

By Senators Fairley, Brandland, Regala, Hewitt and Kohl-Welles

Read first time 02/14/2005. Referred to Committee on Human Services & 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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