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HOUSE BILL 1729

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State of Washington

60th Legislature

2007 Regular Session

By Representatives Dickerson, Roberts, O'Brien and Walsh; by request of Department of Corrections

Read first time 01/25/2007. Referred to Committee on Human Services.

1 AN ACT Relating to earned release time; and amending RCW 9.94A.728.

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

3 **Sec. 1.** RCW 9.94A.728 and 2004 c 176 s 6 are each amended to read  
4 as follows:

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

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

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

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

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

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

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

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

27 (I) A sex offense;

28 (II) A violent offense;

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

30 (IV) A felony that is domestic violence as defined in RCW  
31 10.99.020;

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

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

36 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
37 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

38 and

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

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

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

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

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

33 (e) An offender serving a term of confinement imposed under RCW  
34 9.94A.670(4)(a) is not eligible for earned release credits under this  
35 section;

36 (3) An offender may leave a correctional facility pursuant to an  
37 authorized furlough or leave of absence. In addition, offenders may

1 leave a correctional facility when in the custody of a corrections  
2 officer or officers;

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

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

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

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

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

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

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

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

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

31 (7) The governor may pardon any offender;

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

35 (9) An offender may leave a correctional facility prior to  
36 completion of his or her sentence if the sentence has been reduced as  
37 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.

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