

ESB 6183 - H AMD 927

By Representative Santos

NOT CONSIDERED 04/26/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.94A.685 and 1993 c 419 s 1 are each amended to read
4 as follows:

5 (1) Subject to the limitations of this section, any alien offender
6 committed to the custody of the department under the sentencing reform
7 act of 1981, chapter 9.94A RCW, who has been found by the United States
8 attorney general to be subject to a final order of deportation or
9 exclusion, may be placed on conditional release status and released to
10 the immigration and (~~naturalization service~~) customs enforcement
11 agency for deportation at any time prior to the expiration of the
12 offender's term of confinement. The legal determination and
13 deportation is an activity of the federal government exclusively.
14 Neither the department nor its staff shall be delegated nor shall the
15 department or its staff assume a decision-making role in this process.
16 Conditional release shall continue until the expiration of the
17 statutory maximum sentence provided by law for the crime or crimes of
18 which the offender was convicted. If the offender has multiple current
19 convictions, the statutory maximum sentence allowed by law for each
20 crime shall run concurrently.

21 (2) Offenders placed on conditional release status from Washington
22 state correctional facilities are in a program specific to Washington.
23 Placement on conditional release status does not constitute
24 participation in the immigration and customs enforcement agency's rapid
25 removal of eligible paroles accepted for transfer program.

26 (3) No offender may be released under this section unless:

27 (a) ~~The secretary or the secretary's designee ((find [finds] that~~
28 ~~such release is in the best interests of the state of Washington.~~
29 ~~Further, releases under this section may occur only with the approval~~
30 ~~of the sentencing court and the prosecuting attorney of the county of~~

1 conviction)) has confirmed to the best of his or her ability that the
2 detention facilities in Washington state operated by the immigration
3 and customs enforcement agency, or operated under contract with the
4 immigration and customs enforcement agency, have written guidelines in
5 place that comport with the American correctional association standards
6 regarding the detention of offenders, due process, and personnel
7 training and that these facilities meet Washington state and federal
8 constitutional standards for correctional facilities;

9 (b) The secretary of the department or his or her designee will
10 request to periodically review the conditions and procedures at
11 detention facilities operated by the immigration and customs
12 enforcement agency, including due process, personnel training, and the
13 treatment of detained offenders, that affect offenders placed on
14 conditional release status;

15 (c) The secretary or the secretary's designee has reached an
16 agreement with the immigration and customs enforcement agency that an
17 alien offender placed on conditional release status will be detained in
18 total confinement at a facility operated by the immigration and customs
19 enforcement agency pending the offender's return to the country of
20 origin or other location designated in the final deportation or
21 exclusion order;

22 (d) The alien offender, prior to stipulating to an order of removal
23 or prior to the issuance of a final deportation order by the United
24 States attorney general, has been provided access to information
25 regarding his or her due process rights and has had an opportunity to
26 consult with an attorney or legal representative; and

27 (e) The secretary or the secretary's designee finds that such
28 release is in the best interests of the state of Washington.

29 (4) If the secretary determines that state or federal
30 constitutional standards are not being met at the detention facilities
31 described in this section, the secretary shall immediately report the
32 same to the governor and the legislature and shall immediately refrain
33 from releasing offenders pursuant to this section.

34 (5) The secretary, in consultation with a representative from an
35 immigration legal advocacy organization, shall report annually to the
36 governor and the legislature regarding the substance of the independent
37 review described in subsection (3)(b) of this section and any
38 conclusions and recommendations made pursuant to that review. The

1 report shall make recommendations for modifications of policies or
2 procedures, if appropriate. The first report shall be due on December
3 10, 2009.

4 ((+3)) (6) No offender may be released under this section who is
5 serving a sentence for a violent offense or sex offense, as defined in
6 RCW 9.94A.030, or any other offense that is a crime against a person.

7 ((+4)) (7) The unserved portion of the term of confinement of any
8 offender released under this section shall be tolled at the time the
9 offender is released to the immigration and ~~((naturalization service))~~
10 customs enforcement agency for deportation. Upon the release of an
11 offender to the immigration and ~~((naturalization service))~~ customs
12 enforcement agency, the department shall issue a warrant for the
13 offender's arrest within the United States. This warrant shall remain
14 in effect until the expiration of the offender's conditional release.

15 ((+5)) (8) Upon arrest of an offender, the department shall, upon
16 making a finding that it is in the best interest of the state, seek
17 extradition as necessary and the offender ~~((shall))~~ may be returned to
18 the department for completion of the unserved portion of the offender's
19 term of total confinement. If returned, the offender shall also be
20 required to fully comply with all the terms and conditions of the
21 sentence.

22 ((+6)) (9) Alien offenders released to the immigration and
23 ~~((naturalization service))~~ customs enforcement agency for deportation
24 under this section are not thereby relieved of their obligation to pay
25 restitution or other legal financial obligations ordered by the
26 sentencing court.

27 ((+7)) (10) Any offender released pursuant to this section who
28 returns illegally to the United States may not thereafter be released
29 again pursuant to this section.

30 ((+8)) (11) The secretary is authorized to take all reasonable
31 actions to implement this section and shall assist federal authorities
32 in prosecuting alien offenders who may illegally reenter the United
33 States and enter the state of Washington.

34 NEW SECTION. Sec. 2. (1) The sum of one hundred twenty thousand
35 dollars, or as much thereof as may be necessary, is appropriated for
36 the fiscal year ending June 30, 2010, from the general fund to the
37 department of community, trade, and economic development to contract

1 with an immigration legal advocacy organization for the purpose of
2 providing legal consultation and access to information, pursuant to
3 section 1(3)(d) of this act, for offenders who may be placed on
4 conditional release status and transferred to the custody of the
5 immigration and customs enforcement division of the department of
6 homeland security.

7 (2) The sum of one hundred twenty thousand dollars, or as much
8 thereof as may be necessary is appropriated for the fiscal year ending
9 June 30, 2011, from the general fund to the department of community,
10 trade, and economic development to contract with an immigration legal
11 advocacy organization for the purpose of providing legal consultation
12 and access to information, pursuant to section 1(3)(d) of this act, for
13 offenders who may be placed on conditional release status and
14 transferred to the custody of the immigration and customs enforcement
15 division of the department of homeland security."

16 Correct the title.

EFFECT: (1) Provides that the department of corrections (DOC) has no role in the deportation of an offender who is placed on conditional release status, a status which results in the transfer of custody from the DOC to the Immigration and Customs Enforcement Agency (ICE).

(2) Provides that offenders placed on conditional release status are not part of ICE's Rapid REPAT (removal of eligible parolees accepted for transfer) Program.

(3) Requires that an offender shall not be released on conditional release status to a facility operated by ICE unless: (a) The secretary of DOC or the secretary's designee (secretary) has confirmed to the best of his or her ability that the detention facilities in Washington state operated by ICE have written guidelines in place that comport with the American correctional association standards and meet state and federal constitutional requirements for correctional facilities; (b) the secretary requests that ICE permit him or her to review the conditions and procedures at the detention facilities operated by ICE; (c) the secretary has reached an agreement with ICE that offenders transferred to the custody of ICE on conditional release status will be detained in total confinement until the offender returns to his or her country of origin; (d) the offender has been provided access to information regarding his or her due process rights and has had an opportunity to consult with an attorney or legal representative before the offender stipulating to an order of removal or prior to the issuance of a final deportation order; and (e) the secretary has determined that placement of the offender on conditional release status is in the best interests of Washington state.

(4) Requires the secretary to immediately refrain from releasing offenders to ICE under this act if ICE's detention facilities do not meet state and federal constitutional requirements.

(5) Requires the secretary, in consultation with a representative from an immigration legal advocacy organization, to report to the governor and the legislature annually regarding the substance of any review of the conditions and policies at the facilities operated by ICE; the first report is due on December 10, 2009.

(6) Adds an appropriations section providing \$120,000 from the state general fund for each of the fiscal years 2010 and 2011 for the department of community, trade, and economic development (CTED) to contract with an immigration legal advocacy organization to provide legal consultation and access to information for offenders in the custody of the DOC who may be placed on conditional release status.

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