

EHB 2194 - S AMD 519

By Senators Hargrove, Regala

ADOPTED 04/25/2009

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

3 "Sec. 1. RCW 9.94A.728 and 2008 c 231 s 34 are each amended to
4 read 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
20 credits for presentence incarceration. If an offender is transferred
21 from a county jail to the department, the administrator of a county
22 jail facility shall certify to the department the amount of time spent
23 in custody at the facility and the amount of earned release time. An
24 offender who has been convicted of a felony committed after July 23,
25 1995, that involves any applicable deadly weapon enhancements under RCW
26 9.94A.533 (3) or (4), or both, shall not receive any good time credits
27 or earned release time for that portion of his or her sentence that
28 results from any deadly weapon enhancements.

29 (a) In the case of an offender convicted of a serious violent
30 offense, or a sex offense that is a class A felony, committed on or

1 after July 1, 1990, and before July 1, 2003, the aggregate earned
2 release time may not exceed fifteen percent of the sentence. In the
3 case of an offender convicted of a serious violent offense, or a sex
4 offense that is a class A felony, committed on or after July 1, 2003,
5 the aggregate earned release time may not exceed ten percent of the
6 sentence.

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

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

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

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

16 (I) A sex offense;

17 (II) A violent offense;

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

19 (IV) A felony that is domestic violence as defined in RCW
20 10.99.020;

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

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

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

27 (C) Has no prior conviction for:

28 (I) A sex offense;

29 (II) A violent offense;

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

31 (IV) A felony that is domestic violence as defined in RCW
32 10.99.020;

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

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

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

1 (D) Participates in programming or activities as directed by the
2 offender's individual reentry plan as provided under RCW 72.09.270 to
3 the extent that such programming or activities are made available by
4 the department; and

5 (E) Has not committed a new felony after July 22, 2007, while under
6 community custody.

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

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

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

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

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

31 (2)(a) A person convicted of a sex offense, a violent offense, any
32 crime against persons under RCW 9.94A.411(2), or a felony offense under
33 chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a
34 program developed by the department, for transfer to community custody
35 in lieu of earned release time pursuant to subsection (1) of this
36 section;

37 (b) The department shall, as a part of its program for release to
38 the community in lieu of earned release, require the offender to

1 propose a release plan that includes an approved residence and living
2 arrangement. All offenders with community custody terms eligible for
3 release to community custody in lieu of earned release shall provide an
4 approved residence and living arrangement prior to release to the
5 community;

6 (c) The department may deny transfer to community custody in lieu
7 of earned release time pursuant to subsection (1) of this section if
8 the department determines an offender's release plan, including
9 proposed residence location and living arrangements, may violate the
10 conditions of the sentence or conditions of supervision, place the
11 offender at risk to violate the conditions of the sentence, place the
12 offender at risk to reoffend, or present a risk to victim safety or
13 community safety. The department's authority under this section is
14 independent of any court-ordered condition of sentence or statutory
15 provision regarding conditions for community custody;

16 (d) If the department denies transfer to community custody in lieu
17 of earned early release pursuant to (c) of this subsection, the
18 department may transfer an offender to partial confinement in lieu of
19 earned early release up to three months. The three months in partial
20 confinement is in addition to that portion of the offender's term of
21 confinement that may be served in partial confinement as provided in
22 this section;

23 (e) An offender serving a term of confinement imposed under RCW
24 9.94A.670(5)(a) is not eligible for earned release credits under this
25 section;

26 (3) An offender may leave a correctional facility pursuant to an
27 authorized furlough or leave of absence. In addition, offenders may
28 leave a correctional facility when in the custody of a corrections
29 officer or officers;

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

32 (i) The offender has a medical condition that is serious (~~enough~~)
33 and is expected to require costly care or treatment;

34 (ii) The offender poses a low risk to the community because he or
35 she is currently physically incapacitated due to age or the medical
36 condition or is expected to be so at the time of release; and

37 (iii) It is expected that granting the extraordinary medical
38 placement will result in a cost savings to the state.

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

4 (c) The secretary shall require electronic monitoring for all
5 offenders in extraordinary medical placement unless the electronic
6 monitoring equipment interferes with the function of the offender's
7 medical equipment or results in the loss of funding for the offender's
8 medical care, in which case, an alternative type of monitoring shall be
9 utilized. The secretary shall specify who shall provide the monitoring
10 services and the terms under which the monitoring shall be performed.

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

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

17 (6) No more than the final six months of the offender's term of
18 confinement may be served in partial confinement designed to aid the
19 offender in finding work and reestablishing himself or herself in the
20 community. This is in addition to that period of earned early release
21 time that may be exchanged for partial confinement pursuant to
22 subsection (2)(d) of this section;

23 (7) The governor may pardon any offender;

24 (8) The department may release an offender from confinement any
25 time within ten days before a release date calculated under this
26 section;

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

30 (10) Notwithstanding any other provisions of this section, an
31 offender sentenced for a felony crime listed in RCW 9.94A.540 as
32 subject to a mandatory minimum sentence of total confinement shall not
33 be released from total confinement before the completion of the listed
34 mandatory minimum sentence for that felony crime of conviction unless
35 allowed under RCW 9.94A.540, however persistent offenders are not
36 eligible for extraordinary medical placement.

37 NEW SECTION. **Sec. 2.** This act takes effect August 1, 2009."

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1 On page 1, line 1 of the title, after "offenders;" strike the
2 remainder of the title and insert "amending RCW 9.94A.728; and
3 providing an effective date."

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