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HOUSE BILL 2194

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State of Washington                      61st Legislature                      2009 Regular Session

By Representative Appleton; by request of Department of Corrections

Read first time 02/12/09. Referred to Committee on Human Services.

1            AN ACT Relating to extraordinary medical placement for offenders;  
2 amending RCW 9.94A.728; and providing an effective date.

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

4            **Sec. 1.** RCW 9.94A.728 and 2008 c 231 s 34 are each amended to read  
5 as follows:

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

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

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

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

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

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

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

27 (B) Is not confined pursuant to a sentence 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

1 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
2 (C) Has no prior conviction for:  
3 (I) A sex offense;  
4 (II) A violent offense;  
5 (III) A crime against persons as defined in RCW 9.94A.411;  
6 (IV) A felony that is domestic violence as defined in RCW  
7 10.99.020;  
8 (V) A violation of RCW 9A.52.025 (residential burglary);  
9 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
10 violate, RCW 69.50.401 by manufacture or delivery or possession with  
11 intent to deliver methamphetamine; or  
12 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
13 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);  
14 (D) Participates in programming or activities as directed by the  
15 offender's individual reentry plan as provided under RCW 72.09.270 to  
16 the extent that such programming or activities are made available by  
17 the department; and  
18 (E) Has not committed a new felony after July 22, 2007, while under  
19 community custody.  
20 (iii) For purposes of determining an offender's eligibility under  
21 this subsection (1)(b), the department shall perform a risk assessment  
22 of every offender committed to a correctional facility operated by the  
23 department who has no current or prior conviction for a sex offense, a  
24 violent offense, a crime against persons as defined in RCW 9.94A.411,  
25 a felony that is domestic violence as defined in RCW 10.99.020, a  
26 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
27 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
28 manufacture or delivery or possession with intent to deliver  
29 methamphetamine, or a violation of, or an attempt, solicitation, or  
30 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
31 substance to a minor). The department must classify each assessed  
32 offender in one of four risk categories between highest and lowest  
33 risk.  
34 (iv) The department shall recalculate the earned release time and  
35 reschedule the expected release dates for each qualified offender under  
36 this subsection (1)(b).  
37 (v) This subsection (1)(b) applies retroactively to eligible

1 offenders serving terms of total confinement in a state correctional  
2 facility as of July 1, 2003.

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

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

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

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

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

30 (d) If the department denies transfer to community custody in lieu  
31 of earned early release pursuant to (c) of this subsection, the  
32 department may transfer an offender to partial confinement in lieu of  
33 earned early release up to three months. The three months in partial  
34 confinement is in addition to that portion of the offender's term of  
35 confinement that may be served in partial confinement as provided in  
36 this section;

37 (e) An offender serving a term of confinement imposed under RCW

1 9.94A.670(5)(a) is not eligible for earned release credits under this  
2 section;

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

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

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

11 (ii) The offender poses a low risk to the community (~~because he or~~  
12 ~~she is physically incapacitated due to age or the medical condition~~);  
13 and

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

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

19 (c) The secretary shall require electronic monitoring for all  
20 offenders in extraordinary medical placement unless the electronic  
21 monitoring equipment interferes with the function of the offender's  
22 medical equipment or results in the loss of funding for the offender's  
23 medical care. However, electronic monitoring shall not be required if  
24 the offender is bedridden or is totally dependent on others for  
25 mobility. The secretary shall specify who shall provide the monitoring  
26 services and the terms under which the monitoring shall be performed.

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

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

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

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;

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

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

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