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HOUSE BILL 2371

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Darneille and Kagi

1 AN ACT Relating to thirty days of positive incentive time for  
2 offenders who successfully complete evidence-based programming;  
3 amending RCW 9.94A.728 and 9.94A.728; providing an effective date;  
4 providing an expiration date; and declaring an emergency.

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

6 **Sec. 1.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to  
7 read as follows:

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

12 (1) Except as otherwise provided for in subsection (2) of this  
13 section, the term of the sentence of an offender committed to a  
14 correctional facility operated by the department may be reduced by  
15 earned release time in accordance with procedures that shall be  
16 developed and promulgated by the correctional agency having  
17 jurisdiction in which the offender is confined. The earned release  
18 time shall be for good behavior and good performance, as determined by  
19 the correctional agency having jurisdiction. The correctional agency

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

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

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

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

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

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

30 (I) A sex offense;

31 (II) A violent offense;

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

33 (IV) A felony that is domestic violence as defined in RCW  
34 10.99.020;

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

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

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

3 (C) Has no prior conviction for:

4 (I) A sex offense;

5 (II) A violent offense;

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

7 (IV) A felony that is domestic violence as defined in RCW  
8 10.99.020;

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

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

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

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

19 (E) Has not committed a new felony after July 22, 2007, while under  
20 community supervision, community placement, or community custody.

21 (iii) For purposes of determining an offender's eligibility under  
22 this subsection (1)(b), the department shall perform a risk assessment  
23 of every offender committed to a correctional facility operated by the  
24 department who has no current or prior conviction for a sex offense, a  
25 violent offense, a crime against persons as defined in RCW 9.94A.411,  
26 a felony that is domestic violence as defined in RCW 10.99.020, a  
27 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
28 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
29 manufacture or delivery or possession with intent to deliver  
30 methamphetamine, or a violation of, or an attempt, solicitation, or  
31 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
32 substance to a minor). The department must classify each assessed  
33 offender in one of four risk categories between highest and lowest  
34 risk.

35 (iv) The department shall recalculate the earned release time and  
36 reschedule the expected release dates for each qualified offender under  
37 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) If the department denies transfer to community custody status  
5 in lieu of earned early release pursuant to (d) of this subsection, the  
6 department may transfer an offender to partial confinement in lieu of  
7 earned early release up to three months. The three months in partial  
8 confinement is in addition to that portion of the offender's term of  
9 confinement that may be served in partial confinement as provided in  
10 this section;

11 (f) An offender serving a term of confinement imposed under RCW  
12 9.94A.670(4)(a) is not eligible for earned release credits under this  
13 section;

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

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

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

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

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

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

30 (c) The secretary shall require electronic monitoring for all  
31 offenders in extraordinary medical placement unless the electronic  
32 monitoring equipment interferes with the function of the offender's  
33 medical equipment or results in the loss of funding for the offender's  
34 medical care. The secretary shall specify who shall provide the  
35 monitoring services and the terms under which the monitoring shall be  
36 performed.

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

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

5 (6)(a) An offender shall receive thirty days of positive incentive  
6 time which will allow the offender to be released thirty days prior to  
7 the earned release date for his or her sentence if, while in the  
8 custody of the department for the current offense, the offender has:

9 (i) Completed a chemical dependency program offered through the  
10 department while serving his or her sentence at a department facility;

11 (ii) Obtained a general education development certificate;

12 (iii) Participated for a minimum of six months in the forest  
13 management and fire suppression program or other program offered to  
14 offenders through the department of natural resources;

15 (iv) Participated for a minimum of six months in the prison work  
16 crew program;

17 (v) Completed six months of employment with a correctional industry  
18 class II program; or

19 (vi) Completed phase-three requirements of the right living  
20 therapeutic community program.

21 (b) An offender who has lost earned release time within twenty-four  
22 months prior to his or her earned release date is not eligible for  
23 release under this subsection.

24 (c) An offender sentenced pursuant to RCW 9.94A.660 is not eligible  
25 for release under this subsection.

26 (d) The department shall recalculate and reschedule the expected  
27 release dates for each qualified offender under this subsection on or  
28 before August 1, 2009. This subsection applies retroactively to  
29 eligible offenders serving terms of total confinement in a state  
30 correctional facility as of August 1, 2009;

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

37 ~~((+7))~~ (8) The governor may pardon any offender;

1       (~~(+8)~~) (9) The department may release an offender from confinement  
2 any time within ten days before a release date calculated under this  
3 section; and

4       (~~(+9)~~) (10) An offender may leave a correctional facility prior to  
5 completion of his or her sentence if the sentence has been reduced as  
6 provided in RCW 9.94A.870.

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

14       **Sec. 2.** RCW 9.94A.728 and 2008 c 231 s 34 are each amended to read  
15 as follows:

16       No person serving a sentence imposed pursuant to this chapter and  
17 committed to the custody of the department shall leave the confines of  
18 the correctional facility or be released prior to the expiration of the  
19 sentence except as follows:

20       (1) Except as otherwise provided for in subsection (2) of this  
21 section, the term of the sentence of an offender committed to a  
22 correctional facility operated by the department may be reduced by  
23 earned release time in accordance with procedures that shall be  
24 developed and promulgated by the correctional agency having  
25 jurisdiction in which the offender is confined. The earned release  
26 time shall be for good behavior and good performance, as determined by  
27 the correctional agency having jurisdiction. The correctional agency  
28 shall not credit the offender with earned release credits in advance of  
29 the offender actually earning the credits. Any program established  
30 pursuant to this section shall allow an offender to earn early release  
31 credits for presentence incarceration. If an offender is transferred  
32 from a county jail to the department, the administrator of a county  
33 jail facility shall certify to the department the amount of time spent  
34 in custody at the facility and the amount of earned release time. An  
35 offender who has been convicted of a felony committed after July 23,  
36 1995, that involves any applicable deadly weapon enhancements under RCW

1 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
2 or earned release time for that portion of his or her sentence that  
3 results from any deadly weapon enhancements.

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

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

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

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

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

21 (I) A sex offense;

22 (II) A violent offense;

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

24 (IV) A felony that is domestic violence as defined in RCW  
25 10.99.020;

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

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

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

32 (C) Has no prior conviction for:

33 (I) A sex offense;

34 (II) A violent offense;

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

36 (IV) A felony that is domestic violence as defined in RCW  
37 10.99.020;

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



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

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

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

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

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

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

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

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

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

36 (2)(a) A person convicted of a sex offense, a violent offense, any  
37 crime against persons under RCW 9.94A.411(2), or a felony offense under  
38 chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a

1 program developed by the department, for transfer to community custody  
2 in lieu of earned release time pursuant to subsection (1) of this  
3 section;

4 (b) The department shall, as a part of its program for release to  
5 the community in lieu of earned release, require the offender to  
6 propose a release plan that includes an approved residence and living  
7 arrangement. All offenders with community custody terms eligible for  
8 release to community custody in lieu of earned release shall provide an  
9 approved residence and living arrangement prior to release to the  
10 community;

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

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

28 (e) An offender serving a term of confinement imposed under RCW  
29 9.94A.670(5)(a) is not eligible for earned release credits under this  
30 section;

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

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

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

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

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

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

9 (c) The secretary shall require electronic monitoring for all  
10 offenders in extraordinary medical placement unless the electronic  
11 monitoring equipment interferes with the function of the offender's  
12 medical equipment or results in the loss of funding for the offender's  
13 medical care. The secretary shall specify who shall provide the  
14 monitoring services and the terms under which the monitoring shall be  
15 performed.

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

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

22 (6)(a) An offender shall receive thirty days of positive incentive  
23 time which will allow the offender to be released thirty days prior to  
24 the earned release date for his or her sentence if, while in the  
25 custody of the department for the current offense, the offender has:

26 (i) Completed a chemical dependency program offered through the  
27 department while serving his or her sentence at a department facility;

28 (ii) Obtained a general education development certificate;

29 (iii) Participated for a minimum of six months in the forest  
30 management and fire suppression program or other program offered to  
31 offenders through the department of natural resources;

32 (iv) Participated for a minimum of six months in the prison work  
33 crew program;

34 (v) Completed six months of employment with a correctional industry  
35 class II program; or

36 (vi) Completed phase-three requirements of the right living  
37 therapeutic community program.

1        (b) An offender who has lost earned release time within twenty-four  
2 months prior to his or her earned release date is not eligible for  
3 release under this subsection.

4        (c) An offender sentenced pursuant to RCW 9.94A.660 is not eligible  
5 for release under this subsection.

6        (d) The department shall recalculate and reschedule the expected  
7 release dates for each qualified offender under this subsection on or  
8 before August 1, 2009. This subsection applies retroactively to  
9 eligible offenders serving terms of total confinement in a state  
10 correctional facility as of August 1, 2009;

11        (7) No more than the final six months of the offender's term of  
12 confinement may be served in partial confinement designed to aid the  
13 offender in finding work and reestablishing himself or herself in the  
14 community. This is in addition to that period of earned early release  
15 time that may be exchanged for partial confinement pursuant to  
16 subsection (2)(d) of this section;

17        ~~((+7))~~ (8) The governor may pardon any offender;

18        ~~((+8))~~ (9) The department may release an offender from confinement  
19 any time within ten days before a release date calculated under this  
20 section;

21        ~~((+9))~~ (10) An offender may leave a correctional facility prior to  
22 completion of his or her sentence if the sentence has been reduced as  
23 provided in RCW 9.94A.870; and

24        ~~((+10))~~ (11) Notwithstanding any other provisions of this section,  
25 an offender sentenced for a felony crime listed in RCW 9.94A.540 as  
26 subject to a mandatory minimum sentence of total confinement shall not  
27 be released from total confinement before the completion of the listed  
28 mandatory minimum sentence for that felony crime of conviction unless  
29 allowed under RCW 9.94A.540, however persistent offenders are not  
30 eligible for extraordinary medical placement.

31        NEW SECTION. Sec. 3. Section 1 of this act expires August 1,  
32 2009.

33        NEW SECTION. Sec. 4. Section 2 of this act takes effect August 1,  
34 2009.

1        NEW SECTION.    **Sec. 5.**    Section 1 of this act is necessary for the  
2    immediate preservation of the public peace, health, or safety, or  
3    support of the state government and its existing public institutions,  
4    and takes effect immediately.

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