

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1789

61st Legislature
2009 Regular Session

Passed by the House April 18, 2009
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 7, 2009
Yeas 42 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1789** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1789

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington **61st Legislature** **2009 Regular Session**

By Representatives Dammeier, O'Brien, Dickerson, Hurst, Klippert, Morrell, Orwall, Green, Walsh, and Darneille; by request of Department of Corrections

Read first time 01/29/09. Referred to Committee on Human Services.

1 AN ACT Relating to allowing the department of corrections to rely
2 upon jail certification in the calculation of release dates for
3 offenders; amending RCW 9.94A.728; and providing an effective date.

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

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

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

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

1 the offender actually earning the credits. Any program established
2 pursuant to this section shall allow an offender to earn early release
3 credits for presentence incarceration. If an offender is transferred
4 from a county jail to the department, the administrator of a county
5 jail facility shall certify to the department the amount of time spent
6 in custody at the facility and the amount of earned release time. The
7 department may approve a jail certification from a correctional agency
8 that calculates earned release time based on the actual amount of
9 confinement time served by the offender before sentencing when an
10 erroneous calculation of confinement time served by the offender before
11 sentencing appears on the judgment and sentence. An offender who has
12 been convicted of a felony committed after July 23, 1995, that involves
13 any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or
14 (4), or both, shall not receive any good time credits or earned release
15 time for that portion of his or her sentence that results from any
16 deadly weapon enhancements.

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

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

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

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

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

34 (I) A sex offense;

35 (II) A violent offense;

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

37 (IV) A felony that is domestic violence as defined in RCW
38 10.99.020;

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

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

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

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

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

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

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

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

34 (d) If the department denies transfer to community custody in lieu
35 of earned early release pursuant to (c) of this subsection, the
36 department may transfer an offender to partial confinement in lieu of
37 earned early release up to three months. The three months in partial

1 confinement is in addition to that portion of the offender's term of
2 confinement that may be served in partial confinement as provided in
3 this section;

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

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

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

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

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

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

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

23 (c) The secretary shall require electronic monitoring for all
24 offenders in extraordinary medical placement unless the electronic
25 monitoring equipment interferes with the function of the offender's
26 medical equipment or results in the loss of funding for the offender's
27 medical care. The secretary shall specify who shall provide the
28 monitoring services and the terms under which the monitoring shall be
29 performed.

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

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

36 (6) No more than the final six months of the offender's term of
37 confinement may be served in partial confinement designed to aid the
38 offender in finding work and reestablishing himself or herself in the

1 community. This is in addition to that period of earned early release
2 time that may be exchanged for partial confinement pursuant to
3 subsection (2)(d) of this section;

4 (7) The governor may pardon any offender;

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

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

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

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

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