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**SENATE BILL 5684**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators McCune, Gildon, and Wagoner

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1 AN ACT Relating to extraordinary medical placement for  
2 individuals at the department of corrections with terminal illnesses;  
3 reenacting and amending RCW 9.94A.728; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes the importance  
6 of spending one's final moments around those closest to him or her.  
7 As such, the legislature intends to clarify the criteria for which  
8 the secretary of the Washington state department of corrections may  
9 grant a conditional emergency medical placement to explicitly include  
10 offenders diagnosed with a terminal illness, specifically blood  
11 cancer and cancer impacting internal organs. The legislature  
12 recognizes that as innovation in cancer treatment progresses, certain  
13 cancers, such as nonmelanoma skin cancer, are not terminal and should  
14 not be considered terminal by the secretary. The legislature intends  
15 to clarify eligibility for emergency medical placement with the goal  
16 of permitting offenders with terminal illnesses the ability to pass  
17 away surrounded by those who love them.

18 **Sec. 2.** RCW 9.94A.728 and 2021 c 311 s 19 and 2021 c 266 s 2 are  
19 each reenacted and amended to read as follows:

1 (1) No person serving a sentence imposed pursuant to this chapter  
2 and committed to the custody of the department shall leave the  
3 confines of the correctional facility or be released prior to the  
4 expiration of the sentence except as follows:

5 (a) An offender may earn early release time as authorized by RCW  
6 9.94A.729;

7 (b) 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 (c)(i) The secretary may authorize an extraordinary medical  
12 placement for an offender when all of the following conditions exist:

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

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

18 (C) It is expected that granting the extraordinary medical  
19 placement will result in a cost savings to the state.

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

23 (iii) 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  
27 offender's medical care, in which case, an alternative type of  
28 monitoring shall be utilized. The secretary shall specify who shall  
29 provide the monitoring services and the terms under which the  
30 monitoring shall be performed.

31 (iv) The secretary may revoke an extraordinary medical placement  
32 under this subsection (1)(c) at any time.

33 (v) Persistent offenders are not eligible for extraordinary  
34 medical placement;

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

39 (e) No more than the final twelve months of the offender's term  
40 of confinement may be served in partial confinement for aiding the

1 offender with: Finding work as part of the work release program under  
2 chapter 72.65 RCW; or reestablishing himself or herself in the  
3 community as part of the parenting program in RCW 9.94A.6551. This is  
4 in addition to that period of earned early release time that may be  
5 exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

6 (f)(i) No more than the final five months of the offender's term  
7 of confinement may be served in partial confinement as home detention  
8 as part of the graduated reentry program developed by the department  
9 under RCW 9.94A.733(1)(a);

10 (ii) For eligible offenders under RCW 9.94A.733(1)(b), after  
11 serving at least four months in total confinement in a state  
12 correctional facility, an offender may serve no more than the final  
13 18 months of the offender's term of confinement in partial  
14 confinement as home detention as part of the graduated reentry  
15 program developed by the department;

16 (g) The governor may pardon any offender;

17 (h) The department may release an offender from confinement any  
18 time within ten days before a release date calculated under this  
19 section;

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

23 (j) Notwithstanding any other provisions of this section, an  
24 offender sentenced for a felony crime listed in RCW 9.94A.540 as  
25 subject to a mandatory minimum sentence of total confinement shall  
26 not be released from total confinement before the completion of the  
27 listed mandatory minimum sentence for that felony crime of conviction  
28 unless allowed under RCW 9.94A.540; (~~and~~)

29 (k) Any person convicted of one or more crimes committed prior to  
30 the person's eighteenth birthday may be released from confinement  
31 pursuant to RCW 9.94A.730; and

32 (l)(i) The secretary may authorize an extraordinary terminal  
33 medical placement for an offender when all of the following  
34 conditions exist:

35 (A) The offender has a medical condition that is terminal and is  
36 expected to require costly care or treatment;

37 (B) The offender poses a low risk to the community because he or  
38 she is currently physically incapacitated due to a terminal medical  
39 condition or is expected to be so at the time of release; and

1 (C) It is expected that granting the extraordinary terminal  
2 medical placement will result in a cost savings to the state.

3 (ii) An offender convicted of any of the following crimes is not  
4 eligible for an extraordinary terminal medical placement:

5 (A) First degree murder;

6 (B) Second degree murder;

7 (C) Rape in the first degree;

8 (D) Rape in the second degree;

9 (E) Rape of a child in the first degree; and

10 (F) Rape of a child in the second degree.

11 (iii) The secretary shall require electronic monitoring for all  
12 offenders in extraordinary terminal medical placement unless the  
13 electronic monitoring equipment interferes with the function of the  
14 offender's medical equipment or results in the loss of funding for  
15 the offender's medical care, in which case, an alternative type of  
16 monitoring shall be utilized. The secretary shall specify who shall  
17 provide the monitoring services and the terms under which the  
18 monitoring shall be performed.

19 (iv) The secretary may revoke an extraordinary terminal medical  
20 placement under this subsection (1)(1) at any time.

21 (v) For the purposes of this subsection, "terminal" means a  
22 medical prognosis of death within two years. Cancer diagnoses of the  
23 blood or internal organs shall be presumed terminal. Terminal does  
24 not include nonmelanoma skin cancer diagnoses.

25 (2) Notwithstanding any other provision of this section, an  
26 offender entitled to vacation of a conviction or the recalculation of  
27 his or her offender score pursuant to *State v. Blake*, No. 96873-0  
28 (Feb. 25, 2021), may be released from confinement pursuant to a court  
29 order if the offender has already served a period of confinement that  
30 exceeds his or her new standard range. This provision does not create  
31 an independent right to release from confinement prior to  
32 resentencing.

33 (3) Offenders residing in a juvenile correctional facility  
34 placement pursuant to RCW 72.01.410(1)(a) are not subject to the  
35 limitations in this section.

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