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**SUBSTITUTE SENATE BILL 5701**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Regala, Carrell, Brandland, Stevens, and Tom; by request of Department of Corrections)

READ FIRST TIME 02/25/09.

1       AN ACT Relating to jail certification from a correctional agency  
2 that calculates earned release time; amending RCW 9.94A.728; and  
3 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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