
SUBSTITUTE SENATE BILL # XSHB 5866

State of Washington

65rd Legislature

2015 Regular Session

1 AN ACT Relating to the early release of medically needy and elderly offenders ~~((reducing prison~~
2 ~~sentences in order to generate correctional cost savings and invest in evidence based~~
3 ~~programming))~~; amending RCW 9.94A.728; adding a new section to chapter 9.94A and 9.95
4 RCW; creating a new Section; and declaring an emergency.

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

6 **Sec. 1.** of RCW 9.94A.728 and 2010 c 224 § 6 are each amended to read as follows:

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

10 (1) An offender may earn early release time as authorized by RCW 9.94A.729;

11 (2) An offender may leave a correctional facility pursuant to an authorized furlough or
12 leave of absence. In addition, offenders may leave a correctional facility when in the
13 custody of a correction officer or officers;

14 ~~(3) (a) The ((secretary may authorized)) offender may petition the indeterminate sentence~~
15 ~~review board for an extraordinary medical placement pursuant to section (3)(a) and (b)~~
16 ~~below: ((for an offender when all of the following conditions exist:~~

17 (i). ~~The offender has a medically condition that is serious and is expected to~~
18 ~~require costly care of treatment;~~

19 (ii). ~~The offender poses a low risk to the community because he or she IS~~
20 ~~currently physically incapacitated due to age or the medical condition or~~
21 ~~IS expected to be so at the time of release; or the offender is a 10VI risk to~~
22 ~~reoffend as established by objective data or statistics collected by the~~
23 ~~department;~~

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

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

28 (c). ~~The secretary shall require electronic monitoring for all offenders in extraordinary~~
29 ~~medical placement unless the electronic monitoring equipment interferes with the~~
30 ~~function of the offender's medical equipment or results in the loss of funding for~~
31 ~~the offender's medical care, in which case, an alternative type of monitoring shall~~
32 ~~be utilized. The secretary shall specify who shall provide the monitoring services~~
33 ~~and the terms under which the monitoring shall be performed.~~

34 (d). ~~The secretary may revoke an extraordinary medical placement under this~~
35 ~~subsection at any time.~~

36 (e). ~~Persistent offenders are not eligible for extraordinary medical placement;)~~

37 (3) (a) An offender is eligible to petition the board for extraordinary medical placement if
38 the offender has served the greater of 7.5 years or 50% of the sentence imposed, the
39 offender is at least 60 years of age, and the offender's petition contains a written
40 certification by a licensed treating physician stating that, within a reasonable degree of
41 certainty, one of the following circumstances exist:

42 (i). The offender has a serious incapacitating medical need that requires
43 treatment which cannot reasonably be provided while confined in a state
44 correctional facility;

45 (ii). The offender IS incapacitated by age to the extent that deteriorating
46 physical or mental health substantially diminishes the ability of the
47 offender to provide self-care within the environment of a correctional
48 facility;

49 (iii). The offender is permanently physically incapacitated as the result of an
50 irreversible injury, disease or illness which makes significant physical
51 activity impossible, renders the offender dependent on permanent medical
52 intervention for survival: or confines the offender to a bed, wheelchair or
53 other assistive device where the offender's mobility is significantly
54 limited; or

- 55 (iv). The offender suffers from a terminal illness caused by injury or disease
56 which is predicted to result in death within eighteen (18) months of the
57 application for extraordinary medical placement.
- 58 (b). The offender shall forward his or her application for extraordinary medical
59 placement to the indeterminate sentence review board for consideration as
60 provided in section (3)(a). The board may find the offender eligible for extra
61 ordinary medical release if the board determines that one of the requisite medical
62 conditions apply, and;
- 63 (i). The offender is assessed as a low or moderate risk to reoffend;
- 64 (ii). The offender is not serving a sentence for a serious violent offense under
65 RCW 9.94A.507:
- 66 (iii). The offender has a release plan with adequate living arrangements in the
67 community that is consistent with the court ordered approved housing.
- 68 (c). The board shall transfer an offender to extraordinary medical placement if the
69 board determines that the offender meets the criteria under (3)(a) and (b) of this
70 section.
- 71 (d). If the indeterminate sentence review board grants an extraordinary medical
72 placement, the secretary shall transfer the offender to extraordinary medical
73 placement pursuant to this section;
- 74 (e). If the indeterminate sentence review board does not grant an extraordinary
75 medical placement, the offender or secretary may resubmit an application any
76 time there is a change in circumstances that may justify the placement of the
77 offender.
- 78 (f). An offender sentenced to death or to life imprisonment without the possibility of
79 release or parole is **not eligible** for an extraordinary medical placement under this
80 section.
- 81 (g). While in the community on extraordinary medical placement, the department
82 shall:
- 83 (i). Require the offender, if under the age of 65, to be placed on electronic
84 home monitoring unless the electronic monitoring equipment interferes
85 with the function of the offender's medical equipment or results in the loss
86 of funding for the offender's medical care, in which case, an alternative
87 type of monitoring is left to the sound discretion of the secretary or his
88 designee.

- 89 (ii). Apply other terms and conditions to the offender's placement as deemed
90 appropriate by the secretary or as may be imposed by the indeterminate
91 sentence review board;
- 92 (iii). Assign a community corrections officer who will monitor the offender's
93 compliance with the terms and conditions of the placement.
- 94 (iv). The secretary or board may revoke an extraordinary medical placement
95 under this subsection at any time subject to the provision of 9.95.220 and
96 9.95.230.
- 97 (4) ~~The governor, upon recommendation from the clemency and pardons board, may grant~~
98 ~~an extraordinary release for reason of serious health problems, senility, advanced age-~~
99 ~~extraordinary meritorious acts, or other extraordinary circumstances; The offender is~~
100 ~~released as an aging offender as provided in **section 2** of this act.~~
- 101 (5) No more than the final ~~six~~ eight months of the offender's term of confinement may be
102 served in partial confinement "work release" designed to aid the offender in finding
103 work and reestablishing himself or herself in the community or no more than the final
104 twelve months of the offender's term of confinement may be served in partial
105 confinement as part of the parenting program in RCW 9.94A.6551. This is in addition
106 to that period of earned early release time that may be exchanged for partial
107 confinement pursuant to RCW 9.94A.729(5)(d);
- 108 (6) The governor may pardon any offender; or, the governor, upon recommendation from
109 the clemency and pardons board, may grant an extraordinary release for reason of
110 serious health problems, senility, advanced age, extraordinary meritorious acts, or
111 other extraordinary circumstances;
- 112 (7) ~~The department may release an offender from confinement any time within ten twenty-~~
113 ~~(20) days before a release date calculated under this section shall award a Time Served~~
114 Credit of one-half day (¹/₂ day) per month for each month served in total confinement
115 (6 days per year) after the offender has served 18 months of incarceration; provided
116 that the Time Served Credit is subject to reduction for disciplinary action only if the
117 offender's good time and earned time credits have been expunged due to disciplinary
118 action. The following offenders are not eligible for the Time Served Credit, those
119 sentenced pursuant to Half-Time, the Drug Sentencing Alternative (DOSA) and the
120 Special Sex Offender Sentencing Alternative (SSOSA), and those persons convicted
121 for a crime prior to July 1, 1984; and a person sentenced under RCW 9.94A.507 for a
122 serious violent offense committed on or after September 1, 2001.
- 123 (8) An offender may leave a correctional facility prior to completion of his or her sentence
124 if the sentence has been reduced as provided in RCW 9.94A.870; and

125 (9) Notwithstanding any other provisions of this section, an offender sentenced for a
126 felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of
127 total confinement shall not be released from total confinement before the completion
128 of the listed mandatory minimum sentence for that felony crime of conviction unless
129 allowed under RCW 9.94A.540.

130 **NEW SECTION. Sec. 2.** A new section is added to chapter 9.94A.728 RCW to read as follows:

131 (1) Any offender serving a sentence of total confinement imposed pursuant to this chapter
132 and committed to a correctional facility operated by the Department of Corrections,
133 whether sentenced before, on, or after the effective date of this section, shall be
134 eligible to petition the indeterminate sentence review board for extraordinary aging
135 offender release provided that the following criteria are satisfied:

136 (a). The offender is age 60 or older, has served 15 years in confinement and has
137 served 75% of his or her court imposed sentence;

138 (b). The offender is age 65 or older, has served 10 years in confinement and has
139 served 65% of his or her court imposed sentence; and

140 (c). The offender meets the following criteria:

141 (i). The offender is classified as a low to moderate risk to reoffend;

142 (ii). The offender's eligibility is based on a single cause number; or if the
143 offender's sentence is consecutive to a completed sentence, under a
144 different cause number, only the latter sentence will be used to determine
145 eligibility as an aging offender;

146 (iii). The offender has a release plan with adequate living arrangements in the
147 community and his or her housing is approved pursuant to terms of
148 community supervision.

149 (iv). The reduction shall apply to an offender's term of confinement after the
150 application of any earned early release time pursuant to RCW 9.94A. 728;

151 (2) Section 2 **does not apply** to a person convicted for a crime committed prior to July 1,
152 1984, a person sentenced under RCW 9.94A.507 for a serious violent offense
153 committed on or after September 1, 2001, or a person sentenced as a persistent
154 offender (three strikes), a person sentenced to life without parole or a person sentenced
155 to death; or offenders serving a term for aggravated murder or to offenders sentenced
156 pursuant to RCW 9.94A.662 or 9.94A.670.

157 (3) Offenders sentenced under RCW 9.94A.540, the mandatory minimum term, shall be
158 eligible for the Time Served Credit, but no other credits for good time or earned time
159 shall reduce the mandatory minimum term.

- 160 (4) The failure of the department to promptly release an offender on the new release date
161 as calculated under this section does not create a liberty interest and shall in no
162 circumstances give rise to a cause of action on the part of the offender
- 163 (5) An offender who meets the criteria in subsection (a) and (b) may;
- 164 (a). Petition the indeterminate sentence review board for a determination of whether
165 the aging offender may be released as provided in section 6 of this act.
- 166 (b). A person released as an aging offender shall be placed on community supervision
167 under the jurisdiction of the department until the expiration of the maximum term
168 of the court imposed sentence. The department shall monitor the offender's
169 compliance with conditions of community custody and promptly report any
170 violations to the board. Any violation of conditions of community custody
171 established or modified by the board are subject to the provisions of RCW
172 9.95.425 through 9.95.440.
- 173 (6) The department shall adopt procedures and rules to allow aging offenders who meet
174 the criteria of this section to apply to the indeterminate sentence review board for
175 consideration under section 5.
- 176 (7) If the indeterminate sentence review board determines that an aging offender should
177 not be released based on objective factors, the offender may reapply once every 18
178 months.

179 **NEW SECTION. Sec. 3.** A new section is added to chapter 9.95.100 RCW to read as follows:

- 180 (1) Within 60 days of receipt of an application for extraordinary medical placement, the
181 board shall conduct a hearing to determine whether the placement should be granted.
- 182 (2) The board must grant an extraordinary medical placement if it determines that:
- 183 (a). Based on a review of all available information, one or more of the requisite
184 medical conditions under section 2 of this act are present
- 185 (b). The offender is not likely to abscond or violate the law if released;
- 186 (c). Living arrangements are in place in the community, to include approved housing,
187 and the proposed living arrangement does not create an unreasonable risk to
188 public safety
- 189 (3) Living arrangements are in place in the community, to include the department's
190 verification of the address and validation by the owner, lessor, or occupant that the
191 proposed living arrangement has been accepted and that the place of residence does
192 not create an unreasonable risk to public safety as determined by objective factors.

193 **Sec 4.** RCW 9.95.110 and 2009 c 28 s 26 are each amended to read as follows:

194 (1) The board may permit an offender convicted of a crime committed before July 1,
195 1984, to leave the buildings and enclosures of a state correctional institution on parole,
196 after such convicted person has served the period of confinement fixed for him or her
197 by the board, less time credit for good behavior and diligence in work:

198 **PROVIDED**, That in no case shall an inmate be credited with more than one- third of
199 his or her sentence as fixed by the board.

200 The board may establish rules and regulations under which an offender may be
201 allowed to leave the confines of a state correctional institution on parole, and may
202 return such person to the confines of the institution from which he or she was paroled,
203 at its discretion.

204 (2) The board may permit an offender convicted of a crime committed on or after
205 September 1,2001, and sentenced under RCW 9.94A.507, to leave a state correctional
206 institution on community custody according to the provision of RCW 9.94A.507,
207 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. The person may be returned to
208 the institution following a violation of his or her conditions of release to community
209 custody pursuant to the hearing provisions of RCW 9.95.435.

210 (3) The board may permit an aging offender to leave a state correctional institution on
211 community custody according to the provisions of sections 3 and 6 of this act, RCW
212 9.94A.704, and 9.95.425 through 9.95.440. The person may be returned to the
213 institution following a violation of his or her conditions of release to community
214 custody pursuant to the hearing provisions of RCW 9.95.435.

215 **NEW SECTIONS Sec. 5.** A new section IS added to chapter 9.95 RCW to read as follows:

216 (1) Within 120 days of receipt of an application for aging offender release, the board shall
217 conduct a hearing to determine whether release should be granted.

218 (2) The board shall establish criteria for determining whether to grant an aging offender
219 release, taking into consideration the age of the offender and the length of time served
220 is such that the offender is unlikely to pose an unreasonable risk to public safety and in
221 the interests of justice have substantially been served;

222 **PROVIDED**, That no offender shall be release that reduces his sentence below 65%
223 of the court imposed sentence.

224 (3) The board shall provide opportunities for the victims of any crimes for which the
225 offender has been convicted to present statements as set forth in RCW 7.69.032. The
226 procedures for victim involvement shall be developed by rule.

227 (4) Offenders sentenced to life without the possibility of parole and those sentenced to
228 death are not eligible.

229 (5) If the board orders the aging offender to be released, it shall impose the conditions and
230 instructions provided for in RCW 9. 94A. 704. The board shall consider the
231 department's recommendations and may impose conditions in addition to those
232 recommended by the department. The board may impose or modify conditions of
233 community custody following notice to the offender.