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AN ACT Relating to the post-conviction review panel; amending RCW 9.94A.570 and 9.94A.730; reenacting and amending RCW 9.94A.728; adding a new section to chapter 9.94A RCW; and creating new sections.

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

**Sec. 1.** RCW 9.94A.728 and 2015 c 156 s 1 and 2015 c 134 s 3 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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the community or no more than the final twelve months of the offender's term of confinement may be served in partial confinement as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

(f) The governor may pardon any offender;

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

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

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

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

(k) An offender may leave a correctional facility subject to the authorization of the indeterminate sentence review board as described in section 3 of this act.

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

**Sec. 2.** RCW 9.94A.730 and 2015 c 134 s 6 are each amended to read as follows:

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(1) Notwithstanding any other provision of this chapter, the following may petition the indeterminate sentence review board for early release:

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(a) any person convicted of one or more crimes committed prior to the person's eighteenth birthday, after serving no less than twenty years of total confinement, provided the person has not been convicted for any crime committed subsequent to the person's eighteenth birthday, the person has not committed a disqualifying serious infraction as defined by the department in the twelve months prior to filing the petition for early release, and the current sentence was not imposed under RCW 10.95.030 or 9.94A.507;

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(b) any person whose current sentence was not imposed under subsection(A) of this section, RCW 9.94A.507, or whose current offense was committed prior to July 1, 1984, after serving fifteen years of total confinement, provided the person has not committed a disqualifying serious infraction as defined by the department in the twelve months prior to filing the petition for early release.

Commented [JK(1): Removed "in prison" and added "of total confinement" to be consistent with (a). Prison time does not include presentence time.

(2) No later than five years prior to the date the offender will be eligible to petition for release, the department shall conduct an assessment of the offender and identify programming and services that would be appropriate to prepare the offender for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(3) No later than one hundred eighty days from receipt of the petition for early release, the department shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The

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board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim and survivor of victim input shall be provided by rule. To facilitate victim and survivor of victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence.

(5) An offender released by the board is subject to the supervision of the department for a period of time to be determined by the board, up to the length of the court-imposed term of incarceration. The department shall monitor the offender's compliance with conditions of community custody imposed by the court or board and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

(6) An offender whose petition for release is denied may file a new petition for release five years from the date of denial or at an earlier date as may be set by the board.

(7) An offender released under the provisions of this section may be returned to the institution at the discretion of the board if

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the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. If the board finds that the offender has committed a new violation, the board may return the offender to the institution for up to the remainder of the court-imposed term of incarceration. The offender may file a new petition for release five years from the date of return to the institution or at an earlier date as may be set by the board.

NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A RCW to read as follows:

(1) The indeterminate sentence review board will create a post-conviction review panel which shall hear petitions filed under RCW 9.94A.730(1)(b). The post-conviction review panel shall be comprised of two members of the indeterminate sentence review board, one prosecuting attorney representative, one victims' advocate representative, and one designated judge chosen from a pool of six to eight retired former superior court or appellate court judges/justices. Decisions shall be made by a majority vote.

(2) The legislature shall provide funding for designated judges. Judges shall be paid at the standard rate for pro tem services, together with standard reimbursements.

(3) The indeterminate sentence review board has jurisdiction over the offender for the length of the offender's original sentence.

(4) A presumption exists that the original sentence was appropriate, but that presumption may be overcome by information that is convincing that the person has reformed and poses a low risk of recidivism if released early. The post-conviction review panel shall take into consideration whether the purposes of sentencing, as stated in RCW 9.94A.010, have been satisfied.

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(5) A person who files a petition under RCW 9.94A.730(1)(b) thereby consents to a review of all his or her medical, mental health, and department files.

(6) Upon a petition for early release from an offender, the post-conviction review panel shall consider, if available, the following factors and information: (a) Public safety, (b) the nature and circumstances of the offenses committed including the current and past offenses, (c) the offender's social and medical history, (d) the offender's adjustment while incarcerated, including an infraction history, educational history, programing history, and work history while incarcerated, (e) input from the victims of the crime, (f) input from the police and prosecutors in the jurisdictions where the offender's crimes were committed, (g) input from persons in the community pledging their support of the offender, if released, (h) the available resources in the community to help the transition for the offender to life outside of prison, (i) a risk assessment and psychological evaluation provided by the department, (j) the sentencing judge's analysis in imposing an exceptional sentence, if any, and (k) any other relevant factors. Further, the post-conviction review panel shall consider, if available, a release plan presented by the offender showing where the offender will reside and how he or she will support himself or herself during the first year after his or her release.

(7) The post-conviction review panel may take any of the following actions:

(a) Deny a petition without a hearing;

(b) Grant a petition and release the offender on conditions following a hearing;

(c) Conduct a hearing to consider additional information and then grant or deny the petition;

(d) Continue the consideration of the petition for a period of time up to twelve months.

**Commented [JK(2):** This subsection would change if a two-step review process is used.

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(8) If the post-conviction review panel grants or denies the petition, it shall specify the reasons for the decision.

(9) The granting or denial of a petition is reviewable only if the post-conviction review panel fails to follow the proper procedures.

(10) An action by the post-conviction review panel shall be rendered within **60 days** of the filing of the petition. The decision shall be filed with the superior court in the county where the last offense took place and a certified copy shall be provided to the department. Before the release of an offender, the department shall have direct contact with the post-conviction review panel or judge to confirm the decision.

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**This section is already covered under RCW 9.94A.730.** (12) The offender does not have a right to appointed counsel. Both lawyers and nonlawyers may assist the offender in the preparation of his or her petition and at the hearing.

Deleted: (11) The conditions on release may include: Confinement in a halfway house for up to six months, regular drug and/or alcohol testing, no violations of law, restrictions on travel, no contact with certain individuals or classes of individuals, restrictions on the type of employment and any other restrictions that the post-conviction review panel determines to be reasonable and appropriate. The post-conviction review panel shall order community supervision of the released offender for a minimum of three years. The department shall supervise the offender for the period ordered by the post-conviction review panel and may impose additional conditions.

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(13) All information contained in a petition or that is submitted to the post-conviction review panel is subject to public disclosure.

(14) The indeterminate sentence review board shall conduct an outcome study within three years of the effective date of this section and make recommendations for changes to the eligibility requirements.

(15) Members of the post-conviction review panel are not civilly liable for decisions made while performing their duties.

**Sec. 4.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read as follows:

(1) Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be:

(a) Sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for

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the crime of aggravated murder in the first degree, sentenced to death; or

(b) May be released early by the indeterminate sentence review board.

(2) In addition, no offender subject to this section may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under RCW 9.94A.728 (1) ((j)) (b), (c), (e), (g), or ((j)) (h), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) In the case of an offender in need of emergency medical treatment; or (2) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

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Sec. 5. RCW 9.95.003 and 2011 1<sup>st</sup> sp.s. c 40 s 15 are each amended to read as follows:

(1) The board is created within the department.

(a) Minimum qualifications for board members include but are not limited to:

(i) a bachelor's degree and five years' experience in criminal justice or a social science field; or

(ii) ten years' experience in criminal justice or a social science field.

(b) The board shall consist of a chair and four other members, each of whom shall be appointed by the governor with the consent of the senate. Each member shall hold office for a term of five years, and until his or her successor is appointed and qualified. The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board shall be filled by appointment by the governor with the consent of the senate. In the event of the inability of any member to act, the governor shall appoint some

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competent person to act in his or her stead during the continuance of such inability. The members shall not be removable during their respective terms except for cause determined by the superior court of Thurston county. The governor in appointing the members shall designate one of them to serve as chair at the governor's pleasure. The appointed chair shall serve as a fully participating board member.

(2) The department shall provide administrative and staff support for the board. The secretary may employ a senior administrative officer and such other personnel as may be necessary to assist the board in carrying out its duties.

(3) The members of the board and staff assigned to the board shall not engage in any other business or profession or hold any other public office without the prior approval of the executive ethics board indicating compliance with RCW 42.52.020, 42.52.030, 42.52.040, and 42.52.120; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board shall each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. **Sec. 6.** The provisions of this act apply retroactively to persons incarcerated on the effective date of this section, regardless of the date of the person's underlying offense.

NEW SECTION. **Sec. 7.** This act does not create any expectation that an offender will be released before the end of his or her sentence, and offenders have no reason to conclude that early

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release is a right or entitlement, or that this act creates any liberty interest.

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