
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0549.1/19

ATTY/TYPIST: CL:akl

BRIEF DESCRIPTION: Concerning postconviction review of sentences.

AN ACT Relating to postconviction review of sentences; amending RCW 9.94A.728 and 9.94A.570; and adding new sections to chapter 9.94A RCW.

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

Sec. 1. RCW 9.94A.728 and 2018 c 166 s 2 are each 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;

(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 twelve months of the offender's term of confinement may be served in partial confinement for aiding the offender with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community 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) No more than the final six months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733;

(g) The governor may pardon any offender;

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

(i) 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;

(j) 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~~)

(k) 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

(l) An offender may leave a correctional facility subject to the authorization of the postconviction review panel as provided in sections 2 and 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.

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

(1) Notwithstanding any other provision of this chapter, a person may petition the postconviction review panel for early release if the person:

(a) Is not subject to the jurisdiction of the indeterminate sentence review board pursuant to RCW 9.94A.730 or 9.94A.507, or because the person's offense was committed prior to July 1, 1984;

(b) 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

(c) (i) Has served fifteen years of total confinement; or

(ii) Is at least sixty years of age.

(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 available the programming 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 panel. The panel may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The panel shall order the person released under such affirmative and other conditions as the panel determines appropriate, unless the panel 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 panel 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 panel 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 must 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 panel is subject to the supervision of the department 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 panel. Any violation of conditions of community custody established or modified by the panel are subject to the provisions of RCW 9.95.425, 9.95.430, 9.95.435, and 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 panel.

(7) An offender released under the provisions of this section may be returned to the institution at the discretion of the panel if 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 panel finds that the offender has committed a new violation, the panel 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 panel.

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

(1) The department shall create a postconviction review panel which shall hear petitions filed under subsection (2) of this section. The members of the postconviction review panel shall be appointed by the governor for a renewable term of three years and shall include the following:

- (a) A superior court judge;
- (b) A representative of the department;
- (c) A prosecutor or a representative of a prosecutor's association;
- (d) A representative of law enforcement or a law enforcement association;
- (e) A public defender or a representative of a defender's association;
- (f) A behavioral health specialist; and
- (g) A representative from a community organization that provides resources and support to previously incarcerated individuals.

(2) The board shall select one of its members as chair to serve for a one-year term with such duties and powers as the panel determines. A majority of the voting members of the board constitutes a quorum for the transaction of business of the board.

(3) The postconviction review panel 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 convincing information that the person has reformed and poses a low risk of recidivism if released early. The postconviction review panel shall take into consideration whether the purposes of sentencing, as stated in RCW 9.94A.010, have been satisfied.

(5) A person who files a petition under RCW 9.94A.730(1) 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 postconviction review panel shall consider, if available, the following factors and information:

- (a) Public safety;
- (b) The offender's criminal history;
- (c) The nature and circumstances of the offenses committed, including the current and past offenses;
- (d) The offender's social and medical history;
- (e) The offender's adjustment while incarcerated, including an infraction history, educational history, programing history, and work history while incarcerated;
- (f) Input from the victims of the crime;
- (g) Input from the police and prosecutors in the jurisdictions where the offender's crimes were committed;
- (h) Input from persons in the community pledging their support of the offender, if released;
- (i) The available resources in the community to help the transition for the offender to life outside of prison;
- (j) A risk assessment and psychological evaluation provided by the department;
- (k) The sentencing judge's analysis in imposing an exceptional sentence, if any; and
- (l) Any other relevant factors.

Further, the postconviction 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 postconviction review panel may take any of the following actions:

(a) Deny a petition without a hearing because the offender does not meet the initial criteria for filing a petition; or

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

(8) If the postconviction 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 postconviction review panel fails to follow the proper procedures.

(10) An action by the postconviction review panel shall be rendered within ninety 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 postconviction review panel or judge to confirm the decision.

(11) The conditions for release may include: Partial confinement 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 postconviction review panel determines to be reasonable and appropriate.

(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.

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

(14) The department shall conduct an outcome study within three years of the effective date of this section and make recommendations to the appropriate committees of the legislature for changes to the eligibility requirements.

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

(16) The department shall provide administrative and financial support to the postconviction review panel. The department, in consultation with the postconviction review panel, may adopt rules to implement this section.

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)~~) and may only be released early by the postconviction review panel pursuant to sections 2 and 3 of this act; or ~~((7))~~

(b) When authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. (~~(In addition)~~)

(2) Unless released by the postconviction review panel, 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), (2), (3), (4), (6), (8), or (9))~~) (b), (c), (e), (g), or (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))~~) (a) In the case of an offender in need of emergency medical treatment; or (~~((2))~~) (b) 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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