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BILL REQUEST - CODE REVISER'S OFFICE

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BILL REQ. #: Z-0045.2/17 2nd draft

ATTY/TYPIST: AI:eab

BRIEF DESCRIPTION: Establishing the second look review board.

AN ACT Relating to the second look review board; amending RCW 9.94A.570 and 9.94A.501; 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;

(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 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 second look review board as described in section 2 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, any person who was sentenced under RCW 9.94A.570 may petition the second look review board for early release after serving twenty years in prison, provided the current sentence was not for an offense listed under RCW 9.94A.507 (sex offenses) or 10.95.030 (aggravated first degree murder).

(2) The second look review board shall be comprised of two members of the indeterminate sentence review board and one designated superior court judge. Decisions shall be made by a majority vote.

(3) A designated superior court judge is a sitting or retired superior court judge, which includes the judge who actually imposed the life without the possibility of parole sentence on the offender. If the judge who imposed the sentence is not available, then the presiding judge in the county in which the offender was convicted shall designate another sitting or retired judge to sit as the designated judge on the second look review board for the petitioner's review.

(4) There is a chair of the second look review board designated by the governor who shall assign petitions to individual members of the second look review board and designated judges.

(5) The legislature shall provide financial support for the second look review board, including a daily stipend for designated superior court judges.

(6) A person may file a petition for early release one year prior to his or her first date of eligibility to be released.

(7) A person who files a petition thereby consents to a review of all his or her medical, mental health, and department files.

(8) Upon a petition for early release from an offender, the second look review board 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 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 second look review board 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.

(9) The department shall notify offenders of their eligibility to file a petition pursuant to this section at least three years before their eligibility.

(10) The second look review board may take any of the following actions:

(a) Deny a petition without a hearing;

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

(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.

(11) If the second look review board grants or denies the petition, it shall specify the reasons for the decision.

(12) If the second look review board denies the petition, the offender may not petition again until three years after the denial of the petition.

(13) The granting or denial of a petition is reviewable only if the second look review board fails to follow the proper procedures.

(14) An action by the second look review board shall be rendered within twelve months 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 second look review board or judge to confirm the decision.

(15) The conditions on release may include: Confinement in a halfway house for up to six months, regular drug 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 second look review board determines to be reasonable and appropriate. The second look review board 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 second look review board and may impose additional conditions.

(16) The hearing may be conducted telephonically and without the offender's physical presence at the hearing. When possible, video conferencing shall be used. 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.

(17) The second look review board has jurisdiction over the offender for the length of the offender's original sentence.

(18) In case of a violation of the conditions of release, the second look review board shall take appropriate action and impose appropriate sanctions.

(19) The second look review board may develop and adopt rules to implement procedures to be followed in case of an alleged violation of conditions of release.

(20) A presumption exists that the original sentence was appropriate, but that presumption may be overcome by information that is cogent and convincing that the person has reformed and poses little risk of recidivism if released early. The second look review board shall take into consideration whether the purposes of sentencing, as stated in RCW 9.94A.010, have been satisfied.

(21) The second look review board shall conduct an outcome study within three years of the effective date of this section to determine the success of the program and to make recommendations for changes to the eligibility requirements.

(22) Members of the second look review board are not civilly liable for decisions made while performing their duties.

(23) All information contained in a petition or that is submitted to the second look review board is subject to public disclosure.

**Sec. 3.** 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:

(a) Shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death; or

(b) May be released early by the second look 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)(~~(2)~~, ~~(3)~~, ~~(4)~~, ~~(6)~~, ~~(8)~~) (b), (c), (e), (g), or (~~(9)~~) (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.

**Sec. 4.** RCW 9.94A.501 and 2016 1st sp.s. c 28 s 1 are each amended to read as follows:

(1) The department shall supervise the following offenders who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Offenders convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

(iii) Communication with a minor for immoral purposes; and

(iv) Violation of RCW 9A.44.132(2) (failure to register); and

(b) Offenders who have:

(i) A current conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011.

(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the offender as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e)(i) Has a current conviction for a domestic violence felony offense where domestic violence has been pleaded and proven after

August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence was pleaded and proven after August 1, 2011. This subsection (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

(ii) Has a current conviction for a domestic violence felony offense where domestic violence was pleaded and proven. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an offender under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or 9.94A.670;

(g) Is subject to supervision pursuant to RCW 9.94A.745; or

(h) Was convicted and sentenced under RCW 46.61.520 (vehicular homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony DUI), or RCW 46.61.504(6) (felony physical control).

(5) The department shall supervise any offender who is released by the indeterminate sentence review board and who was sentenced to community custody or subject to community custody under the terms of release.

(6) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under this section or RCW 9.94A.5011.

(7) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section or RCW 9.94A.5011.

(8) The period of time the department is authorized to supervise an offender under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701 (1) through (8), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535.

(9) The department shall supervise any offender who is released by the second look review board who was sentenced to community custody or subject to community custody under the terms of release.

NEW SECTION. **Sec. 5.** 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. 6.** 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 release is a right or entitlement, or that this act creates any liberty interest.

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