

ESHB 1547 - S AMD 401

By Senators Hargrove, Carrell, Stevens

ADOPTED 04/21/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.94A.685 and 1993 c 419 s 1 are each amended to read
4 as follows:

5 (1) Subject to the limitations of this section, any alien offender
6 committed to the custody of the department under the sentencing reform
7 act of 1981, chapter 9.94A RCW, who has been found by the United States
8 attorney general to be subject to a final order of deportation or
9 exclusion, may be placed on conditional release status and released to
10 the immigration and (~~naturalization service~~) customs enforcement
11 agency for deportation at any time prior to the expiration of the
12 offender's term of confinement. Conditional release shall continue
13 until the expiration of the statutory maximum sentence provided by law
14 for the crime or crimes of which the offender was convicted. If the
15 offender has multiple current convictions, the statutory maximum
16 sentence allowed by law for each crime shall run concurrently.

17 (2) No offender may be released under this section unless the
18 secretary or the secretary's designee (~~find [finds] that such release~~
19 ~~is in the best interests of the state of Washington. Further, releases~~
20 ~~under this section may occur only with the approval of the sentencing~~
21 ~~court and the prosecuting attorney of the county of conviction~~) has
22 reached an agreement with the immigration and customs enforcement
23 agency that the alien offender placed on conditional release status
24 will be detained in total confinement at a facility operated by the
25 immigration and customs enforcement agency pending the offender's
26 return to the country of origin or other location designated in the
27 final deportation or exclusion order.

28 ((+3)) No offender may be released under this section who is
29 serving a sentence for a violent offense or sex offense, as defined in

1 RCW 9.94A.030(~~(, or any other offense that is a crime against a~~
2 ~~person)~~).

3 ~~((+4))~~ (3) The unserved portion of the term of confinement of any
4 offender released under this section shall be tolled at the time the
5 offender is released to the immigration and ~~((naturalization service))~~
6 customs enforcement agency for deportation. Upon the release of an
7 offender to the immigration and ~~((naturalization service))~~ customs
8 enforcement agency, the department shall issue a warrant for the
9 offender's arrest within the United States. This warrant shall remain
10 in effect ~~((until the expiration of the offender's conditional~~
11 ~~release))~~ indefinitely.

12 ~~((+5))~~ (4) Upon arrest of an offender, the department ~~((shall))~~
13 may seek extradition as necessary and the offender ~~((shall))~~ may be
14 returned to the department for completion of the unserved portion of
15 the offender's term of total confinement. If returned, the offender
16 shall also be required to fully comply with all the terms and
17 conditions of the sentence.

18 ~~((+6))~~ (5) Alien offenders released to the immigration and
19 ~~((naturalization service))~~ customs enforcement agency for deportation
20 under this section are not thereby relieved of their obligation to pay
21 restitution or other legal financial obligations ordered by the
22 sentencing court.

23 ~~((+7))~~ (6) Any offender released pursuant to this section who
24 returns illegally to the United States may not thereafter be released
25 again pursuant to this section.

26 ~~((+8))~~ (7) The secretary is authorized to take all reasonable
27 actions to implement this section and shall assist federal authorities
28 in prosecuting alien offenders who may illegally reenter the United
29 States and enter the state of Washington.

30 (8) The provisions of this section apply to persons convicted
31 before, on, or after the effective date of this section.

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

34 (1) The department shall provide a written notice of rights in
35 removal proceedings to all offenders in the department's custody who
36 are subject to early release pursuant to RCW 9.94A.685. The notice
37 shall be provided as early in the removal process as feasible.

1 (2) The department shall work in conjunction with a qualified
2 nonprofit legal services organization in the state recognized by the
3 department of justice pursuant to 8 C.F.R. 1003.61, to create the
4 written notice required by subsection (1) of this section. A written
5 notice containing the advisals given to an individual at the first
6 master calendar hearing in a removal proceeding meets the requirements
7 of this section.

8 **Sec. 3.** RCW 10.40.200 and 1983 c 199 s 1 are each amended to read
9 as follows:

10 (1) The legislature finds and declares that in many instances
11 involving an individual who is not a citizen of the United States
12 charged with an offense punishable as a crime under state law, a plea
13 of guilty is entered without the defendant knowing that a conviction of
14 such offense is grounds for deportation, exclusion from admission to
15 the United States, or denial of naturalization pursuant to the laws of
16 the United States. Therefore, it is the intent of the legislature in
17 enacting this section to promote fairness to such accused individuals
18 by requiring in such cases that acceptance of a guilty plea be preceded
19 by an appropriate warning of the special consequences for such a
20 defendant which may result from the plea. It is further the intent of
21 the legislature that at the time of the plea no defendant be required
22 to disclose his or her legal status to the court.

23 (2) Prior to acceptance of a plea of guilty to any offense
24 punishable as a crime under state law, except offenses designated as
25 infractions under state law, the court shall determine that the
26 defendant has been advised of the following potential consequences of
27 conviction for a defendant who is not a citizen of the United States:
28 Deportation, exclusion from admission to the United States, or denial
29 of naturalization pursuant to the laws of the United States. A
30 defendant signing a guilty plea statement containing the advisement
31 required by this subsection shall be presumed to have received the
32 required advisement. If, after September 1, 1983, the defendant has
33 not been advised as required by this section and the defendant shows
34 that conviction of the offense to which the defendant pleaded guilty
35 may have the consequences for the defendant of deportation, exclusion
36 from admission to the United States, or denial of naturalization
37 pursuant to the laws of the United States, the court, on defendant's

1 motion, shall vacate the judgment and permit the defendant to withdraw
2 the plea of guilty and enter a plea of not guilty. Absent a written
3 acknowledgement by the defendant of the advisement required by this
4 subsection, the defendant shall be presumed not to have received the
5 required advisement.

6 (3) With respect to pleas accepted prior to September 1, 1983, it
7 is not the intent of the legislature that a defendant's failure to
8 receive the advisement required by subsection (2) of this section
9 should require the vacation of judgment and withdrawal of the plea or
10 constitute grounds for finding a prior conviction invalid.

11 (4) Prior to acceptance of a plea of guilty to any offense
12 punishable as a crime under state law, except offenses designated as
13 infractions under state law, the court shall advise the defendant that,
14 pursuant to RCW 9.94A.685, the defendant may be subject to early
15 release from custody for removal from the United States as a
16 consequence of conviction and that the defendant may be able to contest
17 a removal order.

18 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 immediately."

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22 On page 1, line 1 of the title, after "offenders;" strike the
23 remainder of the title and insert "amending RCW 9.94A.685 and
24 10.40.200; adding a new section to chapter 9.94A RCW; and declaring an
25 emergency."

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