

Department of Corrections Agency Request Legislation

A. Expansion of the Department's Graduated Reentry Program

Summary of Proposal

The Department of Corrections is requesting legislative changes would reduce the prison population by creating an option for incarcerated individuals with approved housing plans, regardless of offense or sentence type, to serve the final 150 days of their sentence in partial confinement on electronic home monitoring under the jurisdiction of the Department.

Additionally, individuals serving sentences for Property/Other offenses would serve little, to no time in a prison facility. This proposal would allow certain incarcerated individuals to serve all but 120 days of their sentence in partial confinement on electronic home monitoring under the jurisdiction of the Department. This proposal would not apply to individuals currently serving a sentence(s) for violent, sex or crimes against a person offense.

This proposal would not apply to individuals subject to deportation, civil commitment or interstate compact.

This proposal would make the following amendments to RCW 9.94A.733:

- Eliminates the twelve month minimum confinement in a state correctional facility requirement;
- Removes the six month maximum on participation for the graduated reentry program

B. Limiting Tolling of Community Custody Terms

Summary of Proposal

Tolling is when time served toward a community custody sentence is paused due to an individual not being available for supervision. The Department of Corrections is proposing changes that would limit the tolling of community supervision terms to only the time when an individual is serving original jail time or has absconded from supervision. This change would eliminate tolling for times the individual is returned to total confinement, confined for violations of community custody if serving on a current sex offense, or while serving a separate sentence of confinement.

Tolling information is not readily available through data systems, therefore manual recalculations of Scheduled End Dates (SEDs) are required and significant research is needed in order to reconcile the successful time on supervision, the tolled time on supervision and compliance credits earned. Sentence recalculation is complex, and changes throughout an individual's time while under the jurisdiction of the department. The vast majority of errors in SEDs would be eliminated if tolling was not required to the extent that it is today.

This proposal was included in the SGC Recommendations as part of the 2019 Review of the Sentencing Reform Act.

This proposal makes the following amendments to RCW 9.94A.171:

- Limits tolling of community custody terms by the department to periods of time wherein:
 - A secretary's warrant has been issued;
 - A bench warrant has been issued; and

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- An incarcerated individual is serving confinement time as part of their original sentence.
- Specifies that community custody terms shall not be tolled while serving court ordered alternatives in the community.

C. Increased Earned Time

Summary of Proposal

50% Earned Time – Under current law, certain individuals are eligible to earn up to 33 percent off their prison sentence for good behavior. This proposal changes the allowable amount of earned time on a sentence from a maximum of 33 percent to a maximum of 50 percent, if the offense was not classified as a violent, sex, or crime against a person offense, to include drug offenses. Based on a report by the Washington State Institute for Public Policy, offenders who were awarded the increased earned time percentage had a 3.5 percent lower felony recidivism rate after three years than offenders who stayed in prison longer.

Earned Time on Weapon Enhancements – Currently, if an offender has a weapon enhancement on one or more counts, the enhancement(s) are served consecutive to one another and consecutive to the underlying sentence. The current law does not allow offenders to receive any earned time for the weapon enhancement portion of an offender's sentence, but does allow earned time on the underlying sentence.

This proposal would allow earned time on an offender's entire sentence, not just a portion of the sentence. The rate of time earned for the enhancement portion would be consistent to the rate allowed for the underlying sentence.

The average daily population (ADP) savings estimate assumes a prospective and retroactive application of the proposed sentencing changes for any offender with a sentence that includes a firearm or other deadly weapon enhancement. It would require any offender currently incarcerated, as of the effective date of this legislative change, to have his or her estimated release date recalculated to reflect the increased percent of earned time allowed. This proposal was included in the SGC Recommendations as part of the 2019 Review of the Sentencing Reform Act.

This proposal makes the following amendments to RCW.9.94A.729:

- Remove the restriction that weapon enhancements are not eligible for earned time. This change would be applied retrospectively to any applicable sentences.
- Changing the amount of earned time on a sentence from a maximum of 33 percent to a maximum of 50 percent, if the offense was not classified as violent, sex, or crime against a person offense. This change would be applied retroactive and prospective for anyone who did not commit a crime against a person.

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Notes on Fiscal Impacts from DOC

The partial confinement expansion and increased earned time proposals have significant interdependencies and as a result, they are combined in the decision package. These combined proposals would result in an average daily population (ADP) prison reduction of 4,489 in FY 2022 and 4,020 FY 2023, and an increase in community supervision ADP of 2,955 in FY 2022 and 2,588 in FY 2023. The net savings from the prison reductions, supervision and electronic home monitoring (EHM) costs is approximately \$84.3 million GF-State in 2021-23 (without consideration of phase-in during FY 2022).

If you break these policies down in to stand-alone proposals, and ignore the interdependencies:

- Partial confinement expansion would result in a prison reduction of 3,181 ADP in FY 2022 and 2,358 ADP FY 2023. The net savings, after supervision and EHM costs, would be \$24.4 million GF-State in 2021-23.
- Increased Earned Time includes two components, 50 percent Earned Time and Weapons Enhancements, that would result in a prison reduction of 1,308 ADP in FY 2022 and 1,661 ADP in FY 2023, and savings of \$42 million GF-State in 2021-23.
 - If broken out further, 50 percent Earned Time would result in a prison reduction 853 ADP in FY 2022 and 1,128 ADP in FY 2023, and savings of \$28.1 million GF-State in 2021-23; and
 - Weapons Enhancements would result in a prison reduction of 210 ADP in FY 2022 and 218 ADP in FY 2023, and savings of \$5.9 million GF-State in 2021-23.

All of the savings assumptions used in the Sentencing and Policy Changes decision package are based on average unit costs (AUC). AUC is the average cost to operate a facility unit of 256 beds. This calculation includes direct variable costs (food, clothing, medical services, etc.) and custody staffing within the unit.

If the Legislature adopted the DOC sentencing and policy proposals, ADP reductions of that magnitude would result in additional savings from unit and/or facility closures. The department submitted a Prison Staffing Reduction decision package (attached) to capture these additional savings and to highlight that various factors that would need to be considered.

It is important to note that the FY 2022 expenditure reductions, included in both decision packages, assume 12 full months of savings. As we do not know which, if any of the sentencing reform items would be enacted, DOC is unable to include the needed phase-in period. Closing prison facilities and units can take six or more months, which could potentially decrease the FY 2022 savings estimate by 50 percent or more.