
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0030.1/21

ATTY/TYPIST: JO:lel

BRIEF DESCRIPTION: Concerning allowed earned time for certain offenses.

1 AN ACT Relating to allowed earned time for certain offenses;
2 amending RCW 9.94A.729 and 9.94A.729; creating new sections;
3 providing an effective date; and providing an expiration date.

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

5 **Sec. 1.** RCW 9.94A.729 and 2015 c 134 s 4 are each amended to
6 read as follows:

7 (1)(a) The term of the sentence of an offender committed to a
8 correctional facility operated by the department may be reduced by
9 earned release time in accordance with procedures that shall be
10 developed and adopted by the correctional agency having jurisdiction
11 in which the offender is confined. The earned release time shall be
12 for good behavior and good performance, as determined by the
13 correctional agency having jurisdiction. The correctional agency
14 shall not credit the offender with earned release credits in advance
15 of the offender actually earning the credits.

16 (b) Any program established pursuant to this section shall allow
17 an offender to earn early release credits for presentence
18 incarceration. If an offender is transferred from a county jail to
19 the department, the administrator of a county jail facility shall
20 certify to the department the amount of time spent in custody at the
21 facility and the number of days of early release credits lost or not

1 earned. The department may approve a jail certification from a
2 correctional agency that calculates early release time based on the
3 actual amount of confinement time served by the offender before
4 sentencing when an erroneous calculation of confinement time served
5 by the offender before sentencing appears on the judgment and
6 sentence. The department must adjust an offender's rate of early
7 release listed on the jail certification to be consistent with the
8 rate applicable to offenders in the department's facilities. However,
9 the department is not authorized to adjust the number of presentence
10 early release days that the jail has certified as lost or not earned.

11 (2) An offender who has been convicted of a felony committed
12 after July 23, 1995, that involves any applicable deadly weapon
13 enhancements under RCW 9.94A.533 (3) or (4), or both, (~~shall not~~)
14 may receive any good time credits or earned release time for that
15 portion of his or her sentence that results from any deadly weapon
16 enhancements. The offender may receive good time credits and earned
17 release time for the weapons enhancement portion of the sentence at
18 the same rate allowed for the sentence on the underlying offense.

19 (3) An offender may earn early release time as follows:

20 (a) In the case of an offender sentenced pursuant to RCW
21 10.95.030(3) or 10.95.035, the offender may not receive any earned
22 early release time during the minimum term of confinement imposed by
23 the court; for any remaining portion of the sentence served by the
24 offender, the aggregate earned release time may not exceed ten
25 percent of the sentence.

26 (b) In the case of an offender convicted of a serious violent
27 offense, or a sex offense that is a class A felony, committed on or
28 after July 1, 1990, and before July 1, 2003, the aggregate earned
29 release time may not exceed fifteen percent of the sentence.

30 (c) In the case of an offender convicted of a serious violent
31 offense, or a sex offense that is a class A felony, committed on or
32 after July 1, 2003, the aggregate earned release time may not exceed
33 ten percent of the sentence.

34 (d) An offender is qualified to earn up to fifty percent of
35 aggregate earned release time if he or she (~~is~~)

36 ~~(i) Is not classified as an offender who is at a high risk to~~
37 ~~reoffend as provided in subsection (4) of this section;~~

38 ~~(ii) Is) is not confined pursuant to a sentence for:~~

39 ~~((A)) (i) A sex offense;~~

40 ~~((B)) (ii) A violent offense; or~~

1 (~~(C)~~) (iii) A crime against persons as defined in RCW
2 9.94A.411(~~(C)~~);

3 ~~(D) A felony that is domestic violence as defined in RCW
4 10.99.020;~~

5 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

6 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to
7 violate, RCW 69.50.401 by manufacture or delivery or possession with
8 intent to deliver methamphetamine; or~~

9 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to
10 violate, RCW 69.50.406 (delivery of a controlled substance to a
11 minor);~~

12 ~~(iii) Has no prior conviction for the offenses listed in (d)(ii)
13 of this subsection;~~

14 ~~(iv) Participates in programming or activities as directed by the
15 offender's individual reentry plan as provided under RCW 72.09.270 to
16 the extent that such programming or activities are made available by
17 the department; and~~

18 ~~(v) Has not committed a new felony after July 22, 2007, while
19 under community custody).~~

20 (e) In no other case shall the aggregate earned release time
21 exceed one-third of the total sentence.

22 (4) The department shall perform a risk assessment of each
23 offender who may qualify for earned early release under subsection
24 (3)(d) of this section utilizing the risk assessment tool recommended
25 by the Washington state institute for public policy. (~~Subsection
26 (3)(d) of this section does not apply to offenders convicted after
27 July 1, 2010.~~)

28 (5)(a) A person who is eligible for earned early release as
29 provided in this section and who will be supervised by the department
30 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to
31 community custody in lieu of earned release time;

32 (b) The department shall, as a part of its program for release to
33 the community in lieu of earned release, require the offender to
34 propose a release plan that includes an approved residence and living
35 arrangement. All offenders with community custody terms eligible for
36 release to community custody in lieu of earned release shall provide
37 an approved residence and living arrangement prior to release to the
38 community;

39 (c) The department may deny transfer to community custody in lieu
40 of earned release time if the department determines an offender's

1 release plan, including proposed residence location and living
2 arrangements, may violate the conditions of the sentence or
3 conditions of supervision, place the offender at risk to violate the
4 conditions of the sentence, place the offender at risk to reoffend,
5 or present a risk to victim safety or community safety. The
6 department's authority under this section is independent of any
7 court-ordered condition of sentence or statutory provision regarding
8 conditions for community custody;

9 (d) If the department is unable to approve the offender's release
10 plan, the department may do one or more of the following:

11 (i) Transfer an offender to partial confinement in lieu of earned
12 early release for a period not to exceed three months. The three
13 months in partial confinement is in addition to that portion of the
14 offender's term of confinement that may be served in partial
15 confinement as provided in RCW 9.94A.728(~~(5)~~) (1)(e);

16 (ii) Provide rental vouchers to the offender for a period not to
17 exceed three months if rental assistance will result in an approved
18 release plan.

19 A voucher must be provided in conjunction with additional
20 transition support programming or services that enable an offender to
21 participate in services including, but not limited to, substance
22 abuse treatment, mental health treatment, sex offender treatment,
23 educational programming, or employment programming;

24 (e) The department shall maintain a list of housing providers
25 that meets the requirements of RCW 72.09.285. If more than two
26 voucher recipients will be residing per dwelling unit, as defined in
27 RCW 59.18.030, rental vouchers for those recipients may only be paid
28 to a housing provider on the department's list;

29 (f) For each offender who is the recipient of a rental voucher,
30 the department shall gather data as recommended by the Washington
31 state institute for public policy in order to best demonstrate
32 whether rental vouchers are effective in reducing recidivism.

33 (6) An offender serving a term of confinement imposed under RCW
34 9.94A.670(5)(a) is not eligible for earned release credits under this
35 section.

36 **Sec. 2.** RCW 9.94A.729 and 2020 c 330 s 2 are each amended to
37 read as follows:

38 (1)(a) The term of the sentence of an offender committed to a
39 correctional facility operated by the department may be reduced by

1 earned release time in accordance with procedures that shall be
2 developed and adopted by the correctional agency having jurisdiction
3 in which the offender is confined. The earned release time shall be
4 for good behavior and good performance, as determined by the
5 correctional agency having jurisdiction. The correctional agency
6 shall not credit the offender with earned release credits in advance
7 of the offender actually earning the credits.

8 (b) Any program established pursuant to this section shall allow
9 an offender to earn early release credits for presentence
10 incarceration. If an offender is transferred from a county jail to
11 the department, the administrator of a county jail facility shall
12 certify to the department the amount of time spent in custody at the
13 facility and the number of days of early release credits lost or not
14 earned. The department may approve a jail certification from a
15 correctional agency that calculates early release time based on the
16 actual amount of confinement time served by the offender before
17 sentencing when an erroneous calculation of confinement time served
18 by the offender before sentencing appears on the judgment and
19 sentence. The department must adjust an offender's rate of early
20 release listed on the jail certification to be consistent with the
21 rate applicable to offenders in the department's facilities. However,
22 the department is not authorized to adjust the number of presentence
23 early release days that the jail has certified as lost or not earned.

24 (2) (a) An offender who has been convicted of a felony committed
25 after July 23, 1995, that involves any applicable deadly weapon
26 enhancements under RCW 9.94A.533 (3) or (4), or both, (~~shall not~~)
27 may receive any good time credits or earned release time for that
28 portion of his or her sentence that results from any deadly weapon
29 enhancements. The offender may receive good time credits and earned
30 release time for the weapons enhancement portion of the sentence at
31 the same rate allowed for the sentence on the underlying offense.

32 (b) An offender whose sentence includes any impaired driving
33 enhancements under RCW 9.94A.533(7), minor child enhancements under
34 RCW 9.94A.533(13), or both, shall not receive any good time credits
35 or earned release time for any portion of his or her sentence that
36 results from those enhancements.

37 (3) An offender may earn early release time as follows:

38 (a) In the case of an offender sentenced pursuant to RCW
39 10.95.030(3) or 10.95.035, the offender may not receive any earned
40 early release time during the minimum term of confinement imposed by

1 the court; for any remaining portion of the sentence served by the
2 offender, the aggregate earned release time may not exceed ten
3 percent of the sentence.

4 (b) In the case of an offender convicted of a serious violent
5 offense, or a sex offense that is a class A felony, committed on or
6 after July 1, 1990, and before July 1, 2003, the aggregate earned
7 release time may not exceed fifteen percent of the sentence.

8 (c) In the case of an offender convicted of a serious violent
9 offense, or a sex offense that is a class A felony, committed on or
10 after July 1, 2003, the aggregate earned release time may not exceed
11 ten percent of the sentence.

12 (d) An offender is qualified to earn up to fifty percent of
13 aggregate earned release time if he or she(~~(÷~~

14 ~~(i) Is not classified as an offender who is at a high risk to~~
15 ~~reoffend as provided in subsection (4) of this section;~~

16 ~~(ii) Is)) is not confined pursuant to a sentence for:~~

17 ~~((A)) (i) A sex offense;~~

18 ~~((B)) (ii) A violent offense; or~~

19 ~~((C)) (iii) A crime against persons as defined in RCW~~
20 ~~9.94A.411(~~(÷~~~~

21 ~~(D) A felony that is domestic violence as defined in RCW~~
22 ~~10.99.020;~~

23 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

24 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~
25 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~
26 ~~intent to deliver methamphetamine; or~~

27 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~
28 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a~~
29 ~~minor);~~

30 ~~(iii) Has no prior conviction for the offenses listed in (d)(ii)~~
31 ~~of this subsection;~~

32 ~~(iv) Participates in programming or activities as directed by the~~
33 ~~offender's individual reentry plan as provided under RCW 72.09.270 to~~
34 ~~the extent that such programming or activities are made available by~~
35 ~~the department; and~~

36 ~~(v) Has not committed a new felony after July 22, 2007, while~~
37 ~~under community custody)).~~

38 (e) In no other case shall the aggregate earned release time
39 exceed one-third of the total sentence.

1 (4) The department shall perform a risk assessment of each
2 offender who may qualify for earned early release under subsection
3 (3)(d) of this section utilizing the risk assessment tool recommended
4 by the Washington state institute for public policy. ((Subsection
5 ~~(3)(d) of this section does not apply to offenders convicted after~~
6 ~~July 1, 2010.~~))

7 (5)(a) A person who is eligible for earned early release as
8 provided in this section and who will be supervised by the department
9 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to
10 community custody in lieu of earned release time;

11 (b) The department shall, as a part of its program for release to
12 the community in lieu of earned release, require the offender to
13 propose a release plan that includes an approved residence and living
14 arrangement. All offenders with community custody terms eligible for
15 release to community custody in lieu of earned release shall provide
16 an approved residence and living arrangement prior to release to the
17 community;

18 (c) The department may deny transfer to community custody in lieu
19 of earned release time if the department determines an offender's
20 release plan, including proposed residence location and living
21 arrangements, may violate the conditions of the sentence or
22 conditions of supervision, place the offender at risk to violate the
23 conditions of the sentence, place the offender at risk to reoffend,
24 or present a risk to victim safety or community safety. The
25 department's authority under this section is independent of any
26 court-ordered condition of sentence or statutory provision regarding
27 conditions for community custody;

28 (d) If the department is unable to approve the offender's release
29 plan, the department may do one or more of the following:

30 (i) Transfer an offender to partial confinement in lieu of earned
31 early release for a period not to exceed three months. The three
32 months in partial confinement is in addition to that portion of the
33 offender's term of confinement that may be served in partial
34 confinement as provided in RCW 9.94A.728(1)(e);

35 (ii) Provide rental vouchers to the offender for a period not to
36 exceed three months if rental assistance will result in an approved
37 release plan.

38 A voucher must be provided in conjunction with additional
39 transition support programming or services that enable an offender to
40 participate in services including, but not limited to, substance

1 abuse treatment, mental health treatment, sex offender treatment,
2 educational programming, or employment programming;

3 (e) The department shall maintain a list of housing providers
4 that meets the requirements of RCW 72.09.285. If more than two
5 voucher recipients will be residing per dwelling unit, as defined in
6 RCW 59.18.030, rental vouchers for those recipients may only be paid
7 to a housing provider on the department's list;

8 (f) For each offender who is the recipient of a rental voucher,
9 the department shall gather data as recommended by the Washington
10 state institute for public policy in order to best demonstrate
11 whether rental vouchers are effective in reducing recidivism.

12 (6) An offender serving a term of confinement imposed under RCW
13 9.94A.670(5)(a) is not eligible for earned release credits under this
14 section.

15 NEW SECTION. **Sec. 3.** Pursuant to RCW 9.94A.729, the department
16 of corrections shall recalculate the earned release date for any
17 offender currently serving a term in a facility or institution either
18 operated by the state or utilized under contract. The earned release
19 date shall be recalculated whether the offender is currently
20 incarcerated or is sentenced after the effective date of this
21 section, and regardless of the offender's date of offense. For
22 offenders whose offense was committed prior to the effective date of
23 this section, the recalculation shall not extend a term of
24 incarceration beyond that to which an offender is currently subject.
25 This act applies retroactively and prospectively, regardless of the
26 date of an offender's underlying offense.

27 NEW SECTION. **Sec. 4.** The department of corrections'
28 recalculations of earned time pursuant to sections 1 and 2 of this
29 act do not create any expectations that the percentage of earned
30 release time will be revised before July 1, 2021, and offenders have
31 no reason to conclude that the maximum percentage of earned release
32 time is an entitlement or creates any liberty interest. The
33 department of corrections is authorized to take the time reasonably
34 necessary to complete the recalculations of earned release time after
35 the effective date of this section.

36 NEW SECTION. **Sec. 5.** Section 1 of this act expires January 1,
37 2022.

1 NEW SECTION. **Sec. 6.** Section 2 of this act takes effect January
2 1, 2022.

--- END ---