

HOUSE BILL REPORT

HB 1297

As Reported By House Committee On:
Criminal Justice & Corrections

Title: An act relating to earned early release time.

Brief Description: Clarifying the application of limitations on earned early release time to serious violent offenders.

Sponsors: Representatives O'Brien, Ballasiotes, Lovick, Cairnes, Kagi, Campbell and Benson.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/3/99, 2/10/99 [DP].

Brief Summary of Bill

- Clarifies the statutory language relating to the 15 percent cap on good time for certain criminal convictions by adding "commas" to a sentence.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Yvonne Walker (786-7841).

Background:

Under the Sentencing Reform Act, felony offenders receive determinate sentences. A determinate sentence is one where the length of confinement is determined at the time of sentencing; the sentence length generally is not subject to alteration based on events occurring after the sentence is imposed.

The primary exception to this system of determinate sentencing involves the operation of earned early release programs. These programs allow inmates to shorten their

sentence length if they display good behavior by participating in work, education, or treatment programs and by not violating prison or jail rules during confinement.

There are limitations on how much a sentence can be reduced through earned early release both within local jails and state prisons. The maximum amount that a felony sentence can be reduced varies depending on the inmate's offense:

- No more than 15 percent of the sentence may be reduced for serious violent offenses and for class A sex offenses.
- No more than 33 percent of the sentence may be reduced for all other felonies.

Language clarification. The current statutory language at issue is the unpunctuated sentence that places a 15 percent cap on good time for certain criminal convictions:

"In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence."

All other criminal convictions are subject to the 33 percent earned early release rule.

In the 1997 court case of *Mahrle v. the Department of Corrections*, Craig Edward Mahrle claimed the Department of Corrections incorrectly applied the 15 percent earned early release time cap on his case. Mahrle had been convicted for *solicitation to commit second degree murder* which is both a *serious violent offense* and a *class B felony*. He feels the statute, as written, is interpreted to mean the 15 percent cap applies to "serious violent offenses that are class A felonies" or "sex offenses that are class A felonies." Since his conviction was for a class B felony then his sentence should have been subject to the 33 percent earned early release rule.

The Court of Appeals of Washington, Division 3, decided that the current statute was ambiguous even after examination of legislative history. As a result, the court ruled that where an ambiguous statute has two possible interpretations in criminal cases, the rule of lenity provides that statute is to be strictly construed in favor of the defendant (Mahrle). Mr. Mahrle's personal restraint petition was granted and the Department of Corrections was directed to calculate his good time using the 33 percent earned early release cap.

Summary of Bill:

Language clarification. The statutory language relating to the 15 percent cap on good time for certain criminal convictions is clarified by adding commas to the sentence. The 15 percent cap applies to persons:

"convicted of a serious violent offense, or a sexual offense that is a class A felony, committed on or after July 1, 1990"

This language is intended to clarify the Legislature's intention of the earned early release time statute by stating:

- No more than 15 percent of the sentence may be reduced for any serious violent offenses;
- No more than 15 percent of the sentence may be reduced for class A sex offenses; and
- No more than 33 percent of the sentence may be reduced for all other felonies.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: When the Legislature passed this statute several years ago, the Department of Corrections had the same interpretation as the Legislature. However, the Court of Appeals of Washington decided that the current "earned early release" statute, as written, was ambiguous even after examination of legislative history. As a result, the court ruled that the statute was to be construed in favor of the defendant filing suit.

If other offenders decide to also file lawsuits regarding the interpretation of the state's "earned early release" statute, then the Department of Corrections would be required to release anywhere from 50 to 70 serious violent offenders on the streets before their anticipated incarceration release date.

Testimony Against: None.

Testified: (In support) Peggy Smith, Department of Corrections; and James Thatcher, Department of Corrections.