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**HOUSE BILL 1282**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Simmons, J. Johnson, Hansen, Ramel, Frame, Dolan, Bateman, Fitzgibbon, Ryu, Berry, Peterson, Davis, Hackney, Fey, Thai, Gregerson, Macri, Callan, Ormsby, Pollet, Senn, and Ramos; by request of Department of Corrections

Read first time 01/19/21. Referred to Committee on Public Safety.

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 ~~receive any good time credits or earned release time for that portion~~  
15 ~~of his or her sentence that results from any deadly weapon~~  
16 ~~enhancements.~~

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

18 (a) In the case of an offender sentenced pursuant to RCW  
19 10.95.030(3) or 10.95.035, the offender may not receive any earned  
20 early release time during the minimum term of confinement imposed by  
21 the court; for any remaining portion of the sentence served by the  
22 offender, the aggregate earned release time may not exceed ~~((ten~~  
23 ~~percent))~~ one-third of the sentence.

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

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

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

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

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

38 ~~(A) A sex offense;~~

39 ~~(B) A violent offense;~~

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

1 ~~(D) A felony that is domestic violence as defined in RCW~~  
2 ~~10.99.020;~~

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

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

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

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

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

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

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

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

26 ~~(5))~~ (3) (a) A person who is eligible for earned early release as  
27 provided in this section and who will be supervised by the department  
28 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to  
29 community custody in lieu of earned release time;

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

37 (c) The department may deny transfer to community custody in lieu  
38 of earned release time if the department determines an offender's  
39 release plan, including proposed residence location and living  
40 arrangements, may violate the conditions of the sentence or

1 conditions of supervision, place the offender at risk to violate the  
2 conditions of the sentence, place the offender at risk to reoffend,  
3 or present a risk to victim safety or community safety. The  
4 department's authority under this section is independent of any  
5 court-ordered condition of sentence or statutory provision regarding  
6 conditions for community custody;

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

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

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

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

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

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

31 (~~((6))~~) (4) An offender serving a term of confinement imposed  
32 under RCW 9.94A.670(5)(a) is not eligible for earned release credits  
33 under this section.

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

36 (1)(a) The term of the sentence of an offender committed to a  
37 correctional facility operated by the department may be reduced by  
38 earned release time in accordance with procedures that shall be  
39 developed and adopted by the correctional agency having jurisdiction

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

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

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

30 (b) An offender whose sentence includes any impaired driving  
31 enhancements under RCW 9.94A.533(7), minor child enhancements under  
32 RCW 9.94A.533(13), or both, (~~shall not~~) may receive (~~any~~) good  
33 time credits or earned release time for any portion of his or her  
34 sentence that results from those enhancements. The offender may  
35 receive good time credits or earned release time for the enhancement  
36 portion of the sentence at the same rate allowed for the sentence on  
37 the underlying offense.

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

39 (a) In the case of an offender sentenced pursuant to RCW  
40 10.95.030(3) or 10.95.035, the offender may not receive any earned

1 early release time during the minimum term of confinement imposed by  
2 the court; for any remaining portion of the sentence served by the  
3 offender, the aggregate earned release time may not exceed (~~ten~~  
4 ~~percent~~) one-third of the sentence.

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

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

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

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

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

19 ~~(A) A sex offense;~~

20 ~~(B) A violent offense;~~

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

22 ~~(D) A felony that is domestic violence as defined in RCW~~  
23 ~~10.99.020;~~

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

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

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

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

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

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

39 ~~(e))~~ In no other case shall the aggregate earned release time  
40 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))~~ (5) An offender serving a term of confinement imposed  
13 under RCW 9.94A.670(5)(a) is not eligible for earned release credits  
14 under this 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.

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