
SENATE BILL 5285

State of Washington

67th Legislature

2021 Regular Session

By Senators Nguyen, Darneille, Das, Dhingra, Hunt, Lovelett, Nobles, Saldaña, Stanford, and Wilson, C.; by request of Department of Corrections

Read first time 01/19/21. Referred to Committee on Human Services, Reentry & Rehabilitation.

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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