

HOUSE BILL REPORT

HB 1798

As Reported by House Committee On:
Community Safety, Justice, & Reentry
Appropriations

Title: An act relating to allowed earned release time for certain offenses and enhancements.

Brief Description: Concerning allowed earned release time for certain offenses and enhancements.

Sponsors: Representatives Doglio, Simmons, Reed, Ormsby and Gregerson; by request of Department of Corrections.

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/9/24, 1/18/24 [DPS];
Appropriations: 1/29/24, 2/3/24 [DP2S(w/o sub CSJR)].

Brief Summary of Second Substitute Bill

- Modifies earned release time eligibility for individuals who are convicted of offenses committed on or after July 1, 2024, to allow earned release time of up to 33.33 percent of the total sentence for all categories that qualify, including certain sentencing enhancements.
- Requires the Department of Corrections (DOC) to notify law enforcement, witnesses, and the victims and survivors of victims of specific crimes for which the incarcerated individual has been convicted of the individual's earned released date when the individual is transferred to the DOC, and any time the individual's earned release time credits are recalculated.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

Staff: Lena Langer (786-7192).

Background:

An incarcerated individual's felony sentence may be reduced by "earned release time," which is earned through good behavior and good performance, as determined by the correctional agency that has jurisdiction over the individual. An individual can accumulate earned release time while serving a sentence and during presentence incarceration.

The total percentage of the sentence that may be reduced by earned release time depends on various factors, including the underlying offense and when the offense was committed. In general, for sentences eligible for earned release time, the aggregate earned release time may not exceed one-third of the total sentence. However, there are several exceptions to this general rule. The earned release time eligibility rate is 50 percent for individuals meeting certain criteria who were convicted between July 1, 2003, and July 1, 2010. Earned release time for individuals convicted of a serious violent offense or a class A felony sex offense that was committed between July 1, 1990, and July 1, 2003, is limited to 15 percent; if the offense was committed on or after July 1, 2003, the earned release time rate is 10 percent.

Certain sentences, or portions of sentences, are not eligible for earned release time. There is no earned release time eligibility for individuals sentenced under the Special Sex Offender Sentencing Alternative. An individual may not receive any earned release time for the portion of the sentence that results from certain specified enhancements, including firearm and deadly weapons enhancements, and impaired driving enhancements. An individual also may not receive any earned release time on a mandatory minimum sentence. For an individual sentenced for the crime of Aggravated Murder in the first degree committed under the age of 18, which is an indeterminate sentence that includes a mandatory minimum term, the minimum term is not eligible for earned time, but for any extension of the sentence past the mandatory minimum term the individual may accrue earned time up to 10 percent of the remaining sentence.

The Department of Corrections (DOC) is required to perform a risk assessment of certain individuals convicted before July 1, 2010, who may qualify for earned early release, using a risk assessment tool recommended by the Washington State Institute for Public Policy (WSIPP).

Certain individuals who are eligible for earned release time must be transferred to

community custody in lieu of earned release time. Before transferring an individual from confinement into supervised community custody, the DOC must approve the individual's release plan, including the proposed residence and living arrangements. The DOC may deny a release plan if the proposed plan, including residence and living arrangements, places the individual at risk to reoffend, violates the conditions of the sentence or supervision, or presents a risk to victim safety or community safety. If the DOC is unable to approve a release plan, the DOC may transfer the individual to partial confinement in lieu of earned early release for up to three months or provide rental vouchers for up to six months if it will help facilitate the approval of a person's release plan. The DOC must maintain a list of housing providers that meet certain requirements for accepting rental vouchers. The DOC is required to gather data, as recommended by the WSIPP, on each individual receiving a rental voucher to determine if the vouchers are effective in reducing recidivism.

Summary of Substitute Bill:

For all sentences and portions of sentences for offenses committed on or after July 1, 2024, which are eligible for earned release time, the earned release time rate is 33.33 percent of the total sentence. Additionally, firearm and deadly weapon enhancements, and impaired driving enhancements are eligible for earned release time at the same rate as the underlying offense.

The following are ineligible for earned release time:

- a federal sentence served in the Department of Corrections' (DOC) custody;
- an out-of-state sentence served at the DOC;
- a juvenile sentence;
- a less restrictive alternative;
- a civil commitment;
- a mandatory minimum sentence;
- a persistent offender sentence;
- a Special Sex Offender Sentencing Alternative; and
- an Aggravated Murder in the first degree sentence imposed on an adult.

For an individual sentenced for the crime of Aggravated Murder in the first degree committed under the age of 18, the minimum term is not eligible for earned time, but for any extension of the sentence past the mandatory minimum term, the individual may accrue earned time up to 33.33 percent of the remaining sentence.

The correctional agency may calculate but must not credit an individual with earned release credits in advance of the individual earning the credits. The DOC must notify the victims and survivors of victims of any crimes for which the incarcerated individual has been convicted of the individual's earned released date when the individual is transferred to the DOC and any time the individual's earned release time credits are recalculated.

The DOC is not required to gather data on each individual receiving a rental voucher when an individual is transferred to community custody instead of earned release.

Substitute Bill Compared to Original Bill:

The provision prohibiting the correctional agency from crediting an individual with earned release credits in advance of the individual earning the credits is restored, with additional language that the correctional agency may calculate but must not credit an individual with earned release credits in advance.

The changes to earned release time eligibility and rates are made prospective only and existing statutory provisions for earned release time are restored for an individual who is convicted of an offense committed before July 1, 2024.

Provisions are restored requiring the Department of Corrections (DOC) to conduct a risk assessment for certain individuals eligible for earned release who were convicted before July 1, 2010, and requirements related to partial confinement and community custody in lieu of earned release, except for the requirement that the DOC gather data on all individuals receiving rental vouchers when individuals are transferred to community custody instead of earned release.

Appropriation: None.

Fiscal Note: Requested on January 18, 2024.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington is in the midst of an expensive incarceration crisis. Policies such as the restoration of earned time eligibility offer hope and improve public safety. Earned time is exactly that, it is earned. This bill leads with racial justice and evidence, and supports people who want to change their lives. Washington was one of the first states to reduce earned time rates in order to qualify for federal grants. This bill asks to restore earned time to what it was before these reductions. The bill is a move in the right direction to connect individuals with their loved ones and prevent recidivism. Although it is not perfect, the bill addresses the harm of racial disparities in sentencing.

For those currently incarcerated, the change to 33 percent earned time from 10 percent will incentivize the individuals who are showing positive growth and taking advantage of rehabilitative programs. Participating in the DOC's programming while incarcerated is life

changing for some individuals. Currently there is a small incentive to participate in certain programs, but by increasing the amount of earned time that can be earned, individuals will be more likely to participate. Positive reinforcement is a scientifically backed practice that promotes rehabilitation from incarceration. By providing more opportunities, and incentivizing participation in programming, the bill improves the justice system and creates safer communities. Safer communities are created by promoting rehabilitation during incarceration for when the individuals return home and for those in the prison community.

To be eligible to receive 33 percent off of a sentence for earned time would be life changing for the individual, as well as the individual's family. Indigenous people are overrepresented in the correctional facilities. This bill will help address the racial disparities in the correctional facilities. This bill is a chance for redemption and would restore hope. Reducing early earned release time from 33 percent to 10 percent, what it is now, is one of the biggest contributors to the racial disparities in the state's prison systems. This reduction did nothing to increase public safety and does nothing for victims.

While there is support for the bill, there are two technical corrections needed. The first correction needed is to amend the dates in the bill. The second correction is to restore language that was stricken inadvertently. The DOC's perspective on when earned time is calculated is essentially semantics, because it needs to be calculated in advance for certain programming and for certain release requirements, but it still has to be earned by the individual.

One solution to encourage incarcerated individuals to participate in the DOC programming is to amend earned release time. The fact that this is earned is key. This is a great tool for corrections staff and ultimately will reduce recidivism. Earned time credit gives incarcerated individuals something to do while incarcerated and gives individuals incentives to behave well. Earned time is not just given, the incarcerated individual must work for it. From a cost-savings standpoint, millions of dollars can be saved with increased earned release time eligibility. Incarcerated individuals are told upon their arrival what their earned release date is, but it is contingent on the individual's behaviors and actions, and can be reduced based on infractions. This is a public safety bill. Effective rehabilitation is society's best protection against violent crime. This bill tries to thread the needle in terms of the retroactivity, which has been a barrier in the past.

(Opposed) This bill is similar to a bill from 2021. There are strong oppositions to the retroactivity of this proposal. Specifically, there are strong oppositions to retroactively changing people's sentences, including sentences for the most violent offenses. These sentences, for offenses including homicide, murder, assault, and rape, are significant. When the parties negotiated the sentences, they understood the earned release time calculations that were in play. These changes to earned release time are unfair to the victims of these crimes. The changes to earned time in the bill, because they are retroactive, feel like a broken promise to the victims.

The promise or opportunity of earned release is a tool for rehabilitation. Earned release should be earned. The first change the bill makes is striking language prohibiting the correctional agency from crediting the earned release time before the individual has actually earned the time. This language should not be removed from the statute. The DOC currently grants earned release time in advance. The current prohibition on doing so should be enforced. There were strong oppositions to this proposal previously, and there are strong oppositions again, mostly due to the retroactive application of this particular proposal.

(Other) Racial disparities have been found to exist in Washington correctional facilities. It is time to undo some of the historical harms that have been done against indigenous communities in this state. This bill would incentivize good behavior, thus promoting public safety.

Persons Testifying: (In support) Representative Beth Doglio, prime sponsor; Melody Simle; Candice Baughman; Emijah Smith; Chelsea Moore, American Civil Liberties Union; Micaela Romero; Heather Kelly, League of Women Voters; Karen Peacey; Travis Comeslast; Yen Huynh and Trisha Newport, Washington State Department of Corrections; Brooke Davies and Whitney Westerfield, Justice Action Network; Edgar Calixto; and Marco Rodriguez.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) Charles Longshore.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Community Safety, Justice, & Reentry. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Callan, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Dye, Harris, Rude, Sandlin, Schmick, Stokesbary and Wilcox.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to

Recommendation of Committee On Community Safety, Justice, & Reentry:

The second substitute bill:

- eliminates language requiring the Department of Corrections (DOC) to notify the victims and survivors of victims of any crimes for which a person has been convicted of a person's earned release date upon the person's transfer to the DOC, and at any time the person's earned release time credits are recalculated;
- requires the DOC to notify law enforcement of the city and county in which a person convicted of a serious drug offense lived immediately before the person's arrest and conviction, and any witnesses who are entitled to notice, any time the person's earned time credits are recalculated;
- requires the DOC to notify law enforcement of the city and county in which a person convicted of certain specified offenses lived immediately before the person's arrest and conviction, and, if requested, the victims, next of kin, or witnesses who are entitled to notice, any time the person's earned time credits are recalculated; and
- adds a null and void clause making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Earned good time should be increased as it gives recognition to those incarcerated that are showing evidence that they are changing their lives for the better. It is also a way to keep those that are incarcerated busy with less idle time which is good for inmate behavior and officer security. Earned release time makes inmates more successful upon reentry which ultimately will increase community safety, reduce crime victims, reduce recidivism, and save taxpayer dollars that can be diverted for other purposes. These kinds of policies incentivize people to do better with their lives, encourage good behavior, and will make calculating release dates simpler for the DOC. This bill should be enacted to both recognize those convicted prospectively, but it should also be applied to sentences of incarcerated individuals retroactively.

(Opposed) People should not be defined by their worst or best movements in life. Incarcerated individuals should have an incentive to accomplish good and productive activities that reduce their likelihood of recidivism. However, despite the current law prohibiting this, those incarcerated within the DOC are already awarded their earned early release time before earning anything. This undermines any public safety value.

(Other) This is a prospective bill. This bill does not change anything about the ability to calculate or to earn good time. This bill will decrease the sentence for those that have committed serious violent offenses and class A sex offenses. The bill also introduces good time for crimes that involve firearm enhancements, prior driving under the influence (DUI) offenses, and those that commit felony offenses that involve a sexual motivation. It is these types of crimes that raise concerns for some individuals since it will be applied prospectively. If the enactment of this bill does ultimately create some cost savings, then those savings should be used to improve services and programming within the DOC. Simply reducing sentencing does not actually produce a safer community.

Persons Testifying: (In support) Senator Whitney Westerfield, Kentucky Legislature; Vicki Christophersen, Justice Action Network; Vidal Vincent, Freedom Project; and David Trieweler, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.