

**Chapter 137-30 WAC
EARNED RELEASE TIME**

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WAC 137-30-010 Purpose. The rules in this chapter provide a standardized system to award earned release time to offenders committed to department facilities.

[Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-010, filed 5/9/11, effective 6/9/11.]

WAC 137-30-020 Definitions. The definitions in this section apply throughout this chapter.

CCS means community corrections supervisor.

Community custody means an offender's supervision status in the community under the authority of the department where the department has the legal responsibility for adjudicating violations.

CRS means correctional records supervisor.

Earned release time (ERT) means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

Earned time means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

Good conduct time means that portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

ISRB means the indeterminate sentence review board.

[Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-020, filed 5/9/11, effective 6/9/11.]

WAC 137-30-030 Eligibility. (1) **ERT.**

(a) Incarcerated individuals convicted of a serious violent offense or a class A felony sex offense may earn ERT as follows:

(i) Offense committed after June 30, 1990, and before July 1, 2003 - May not exceed 15 percent of their sentence; and

(ii) Offense committed after June 30, 2003 - May not exceed 10 percent of their sentence.

(b) Incarcerated individuals convicted before July 2, 2010, who are classified as moderate or low risk may earn ERT not to exceed 50 percent of their sentence regardless of the date of offense or sentencing, provided they have not been convicted of or have a prior:

(i) Sex offense;

(ii) Violent offense;

(iii) Crime against a person, including identity theft in the first or second degree committed on or after June 7, 2006;

(iv) Felony domestic violence;

(v) Residential burglary;

(vi) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture of, delivery of, or possession with intent to manufacture or deliver, methamphetamine;

(vii) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(viii) Gross misdemeanor stalking;

(ix) Violation of a domestic violence court order, including gross misdemeanors; or

(x) Any new felony committed while under community supervision.

(c) Incarcerated individuals may earn ERT not to exceed 33 and one-third percent of the sentence in all other cases not identified in this section.

(d) An incarcerated individual who has transferred from one sentence within a cause number to the next sentence, or from one cause number to the next cause number, may lose ERT associated with the previous sentence or cause. ERT may be taken on a consecutive sentence that is not yet being served.

(e) Incarcerated individuals found guilty of infraction 557 or 810 (WAC 137-25-030) will lose 50 percent eligibility and all available ERT and privileges as outlined by department policy. Incarcerated individuals found guilty of infraction 813 related to employment or programming while in work release will also lose all available ERT and privileges.

(2) (a) **Earned release time - Eligibility.**

(b) All incarcerated individuals will be eligible for earned release time, except:

(i) Incarcerated individuals sentenced to life without parole.

(ii) Community supervision violators sanctioned by the department on or after May 2, 2012.

(iii) Incarcerated individuals who are a community custody prison (CCP) return or community custody inmate (CCI) termination.

(iv) Incarcerated individuals under board jurisdiction whose minimum term has expired and who have not been paroled or transferred to a consecutive sentence. The ERT will be addressed to the correct sentence after the parole/transfer date is determined.

(v) Juvenile board incarcerated individuals who have not completed the minimum term of confinement.

(vi) Incarcerated individuals found guilty of 557 or 810, or 813 violation related to employment or programming while in work/training release.

(vii) Incarcerated individuals found guilty of a 762 violation will lose all available earned time and programming points for the month the violation occurred.

(3) **Good conduct time.**

(a) All incarcerated individuals will be eligible for good conduct time, except:

(i) Incarcerated individuals sentenced to death or life without parole;

(ii) Incarcerated individuals serving the mandatory or flat time enhancement portion of their sentences;

(iii) Community custody violators sanctioned by the department on or after May 2, 2012;

(iv) Incarcerated individuals sanctioned to community custody prison return or community custody inmate termination; and

(v) Indeterminate incarcerated individuals whose minimum term has expired and who have not been paroled or transferred to a consecutive sentence. Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.

(b) Incarcerated individuals may lose earned and future good conduct time if found guilty of certain serious infractions listed in WAC 137-25-030 and sanctioned per department policy.

(c) The following incarcerated individuals may lose their good conduct time if found guilty of a serious infraction:

(i) Indeterminate incarcerated individuals whose time has not been adopted by the indeterminate sentence review board (ISRB); and

(ii) Determinate incarcerated individuals.

(d) The amount of time lost will be determined by the disciplinary hearing officer/community hearing officer/ISRB.

(e) Good conduct time lost as a result of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release, cannot be restored.

(4) Earned time.

(a) Incarcerated individuals who participate in approved programs, including work and school, are eligible for earned time for each calendar month as follows:

(i) Earned time eligible under 10 percent rule - One and eleven one-hundredths days;

(ii) Earned time eligible under 15 percent rule - One and seventy-six one-hundredths days;

(iii) Earned time eligible under 33 and one-third percent rule - Five days.

(b) Incarcerated individuals are not eligible for earned time if:

(i) Were sentenced under the presentencing Reform Act and the board has extended the cause to the maximum term or previously denied future earned time.

(ii) Refuse any transfer, excluding work/training release.

(iii) Serve 20 consecutive days or more in restrictive housing as defined in DOC 320.255 Restrictive housing for negative behavior or unfounded/unsubstantiated protection concerns. The incarcerated individual who transfer to court from restrictive housing will not be eligible for earned time. The incarcerated individual will be eligible for earned time when authorized to transfer/return to general population. Incarcerated individuals housed in maximum custody will be eligible for earned time, including time out to court, but will not be eligible for programming points. Incarcerated individuals must be in compliance with their current custody facility/case plan and behavior and programming plan.

(iv) Incarcerated individuals will be eligible for earned time if they are pending investigation for negative behavior in administrative segregation and the investigation does not result in serious violation(s) and/or custody demotion.

(v) They are not involved in programming as determined through the classification process and consistent with their case/custody facility plan. This includes refusing programming or being terminated from a program assignment for documented negative or substandard performance. An incarcerated individual who is on a waiting list and then refuses a program assignment will not earn earned time for the month in which she or he refused.

(c) The incarcerated individual will not be penalized if programs and activities are not available.

(d) Denials of earned time may be appealed per DOC 300.380 Classification and custody facility plan review.

[Statutory Authority: RCW 72.01.090. WSR 22-08-014, § 137-30-030, filed 3/24/22, effective 4/24/22. Statutory Authority: RCW 72.01.090 and 72.09.130. WSR 15-08-066, § 137-30-030, filed 3/30/15, effective 4/30/15; WSR 14-04-121, § 137-30-030, filed 2/5/14, effective 3/8/14. Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-030, filed 5/9/11, effective 6/9/11.]

WAC 137-30-040 County jail earned release time. For offenders transferred from a county jail to the department, the jail administrator will certify to the department the amount of jail time spent in custody at the jail and the amount of ERT.

(1) If no certification has been provided, the CRS/designee will send a request to the jail administrator requesting he/she provide a jail certification.

(a) If the jail administrator certifies jail time credits to consecutive sentences for the same time period and the judgment and sentence does not address jail time credits, the CRS will correct the jail certification by deducting any duplicate jail time credits and jail earned release time credits from the jail certification totals and applying the remaining credits.

(b) In the case of a department sanction, if the jail administrator certifies jail credits to a consecutive sentence that includes credits for time served on the department sanction and the judgment and sentence does not address jail time credits, the CRS will deduct the sanction days served from the jail credits and the jail earned release time for sanction time served and apply the remaining credits to the consecutive sentence.

(c) The CRS will send a request to the jail administrator requesting an amended jail certification, unless the jail administrator has requested that the department not send a letter. The CRS does not need to wait for the amended jail certification to apply the proper credits.

(2) The CRS will send the offender DOC Policy 09-261 Court of Appeals Decision - Jail Time Credits, informing him/her of the department's authority to correct the jail certification when there is a manifest error of law in the jail's certification.

(3) If the court orders jail time credits for the same time period on consecutive sentences with the same intake date to prison, the judgment and sentence must be followed and the jail time credits will be applied accordingly. The department may contest the court's calculations by way of the post sentence petition process.

(4) If the court orders jail time credits for the same time period on consecutive sentences with different intake dates to prison, the CRS will apply the credits from the judgment and sentence and then apply wickert time (i.e., out time applied to a period of confinement when the offender is required to serve a consecutive period of confinement starting before the current confinement is complete) for that same time period.

(5) Credit for time served/resentenced on previous conviction. Offenders who are resentenced on a previous conviction are entitled to receive credit for the original jail time, original jail earned re-

lease time, department time served, and ERT on the department time served. All time the offender served for the conviction offense, as well as the ERT at the appropriate percentage, will be applied. Any good conduct time lost due to infractions, or earned time not earned during the time served on the original sentence, must be deducted from the department ERT.

[Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-040, filed 5/9/11, effective 6/9/11.]

WAC 137-30-050 Persistent prison misbehavior. (1) An offender serving a sentence for an offense committed after July 31, 1995, may have his/her earned time credits taken away as part of a disciplinary sanction, when he/she has lost all good conduct time credits for the current commitment.

(2) Offenders serving a sentence for an offense committed after July 31, 1995, who have a record of being a persistent management/disciplinary problem may also have earned time credits taken away.

(3) Earned or future ERT credits may be reduced for offenders serving a sentence for an offense committed after July 31, 1995.

[Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-050, filed 5/9/11, effective 6/9/11.]

WAC 137-30-060 Release date. (1) To calculate an offender's release date on a determinate sentence, the jail time and jail earned release time are deducted from the total sentence. The earned release time applicable per statute is applied to the adjusted sentence.

(2) A determinate offender held beyond his/her earned release date (ERD) may have available ERT taken if found guilty of a serious infraction as defined in WAC 137-25-030.

(3) An offender with an established release date who receives a category A infraction after a community release plan has been approved will have the release date suspended until adjudication of the infraction and all time loss and sanctions are completed.

(4) The staff responsible for entering the sanction information will notify the CRS or designee immediately by telephone and via email if the release date changes, when the offender is denied earned time or loses good conduct time or when time is restored and the ERD is in less than one hundred twenty days.

[Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-060, filed 5/9/11, effective 6/9/11.]

WAC 137-30-070 Restoration of good conduct time. (1) For indeterminate sentences, once the good conduct time denial is addressed and adopted by the ISRB, it cannot be returned to the individual without prior approval of the ISRB.

(2) Good conduct time, and earned time lost in lieu of good conduct time due to persistent prison misbehavior, is the only ERT that can be restored. Time may be restored on a current or consecutive sentence(s) being served during the current confinement term.

(a) The following violations will be eligible for restoration:

- (i) 501, 502, 511, 521, 550, 604, 611, 613, 635, or 637 violation after 10 years;
- (ii) 601, 602, or 704 violation after five years;
- (iii) 507, 603, 650, 651, or 882 violation after three years;
- (iv) Any other serious violation after one year.
- (b) Time will not be restored for the following:
 - (i) For individuals within 120 twenty days of the ERD;
 - (ii) For individuals who have been found guilty of a serious violation within the last year;
 - (iii) When lost as a result of a 557, 762, 810, or 857 violation;
 - (iv) When lost as a result of an 813 violation related to employment or programming while in work/training release;
 - (v) Once addressed/adopted by the board for PAR individuals, unless approved in advance by the board.
- (3) The case manager will establish/review good conduct time restoration plans with eligible individuals during each classification review, regardless of custody level or housing assignment. The restoration plan may be established before the applicable time frame for restoration, and will include:
 - (a) All eligible violations;
 - (b) Not place the individual within 120 days of the ERD;
 - (c) Be targeted for completion at least 10 months before the ERD;
 - (d) Be documented in the custody facility/case plan and approved by the appointing authority/designee. Plans restoring time lost for a 501, 502, 511, 521, 550, 604, 611, 613, 635, or 637 violation(s) require approval from the appropriate deputy director.
- (4) The appointing authority/designee or appropriate deputy director will consider all relevant information when determining whether to approve/deny the restoration plan.
- (5) Restoration plans will be calculated based on the original sanction time and restored as follows:
 - (a) Category A violations - Maximum of 50 percent.
 - (b) Category B violations - Minimum of 50 percent up to 100 percent.
 - (c) Category C violations - Minimum of 75 percent up to 100 percent.
- (6) Time lost will be restored if the individual remains serious violation free, follows the requirements as outlined in the plan, and it has been at least 6 months since the previous classification review.
- (7) The restoration decision is final and cannot be appealed. Restoration plans will remain in effect when an individual transfers between facilities.

[Statutory Authority: RCW 72.01.090. WSR 22-08-014, § 137-30-070, filed 3/24/22, effective 4/24/22. Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-070, filed 5/9/11, effective 6/9/11.]

WAC 137-30-080 Community custody. (1) Offenders with orders of community custody per RCW 9.94A.701 may have their sentences reduced by ERT.

(2) Community custody returns/terminates: During community custody, if an offender has not completed his/her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the viola-

tion, the department may return the offender to total confinement to serve the remainder of the prison term.

(a) This applies solely to offenders who were not held to their maximum expiration date prior to release to community custody.

(b) All jail ERT and DOC ERT applied to the sentence before early release becomes return time.

(c) When determining the length of return time, the department must credit the offender with all community custody time successfully served and with all periods of prehearing time spent in confinement pending all prior and current community custody violation hearings for that cause.

(d) The date the offender was placed in jail on the most recent violation will be the return start date.

(e) The offender is not entitled to any ERT during the return time.

(f) Upon release from total confinement, after serving the return time the offender will resume serving the community custody portion of the sentence for any time remaining on community custody.

[Statutory Authority: RCW 72.01.090 and 72.09.130. WSR 15-23-100, § 137-30-080, filed 11/18/15, effective 12/19/15. Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-080, filed 5/9/11, effective 6/9/11.]