

Chapter 137-30 WAC

EARNED RELEASE TIME

WAC

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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) Offenders 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 fifteen percent of their sentence; and

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

(b) Offenders convicted before July 2, 2010, who are classified as moderate or low risk may earn ERT not to exceed fifty 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) Offenders may earn ERT not to exceed thirty-three and one-third percent of the sentence in all other cases not identified in this section.

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

(2) Good conduct time.

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

(i) Offenders sentenced to death or life without parole;

(ii) Offenders 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) Offenders sanctioned to community custody prison return or community custody inmate termination; and

(v) Indeterminate offenders 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) Offenders 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 offenders may lose their good conduct time if found guilty of a serious infraction:

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

(ii) Determinate offenders.

(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.

(3) Earned time.

(a) Offenders 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 ten percent rule - One and eleven one-hundredths days;

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

(iii) Earned time eligible under thirty-three and one-third percent rule - Five days;

(iv) Earned time eligible under fifty percent rule - Ten days.

(b) Offenders are not eligible for earned time if:

(i) They are serving an indeterminate sentence, and the ISRB has:

(A) Extended the cause to the maximum term; or

(B) Previously denied future earned time.

(ii) They are not involved in mandatory programming as determined through the classification process and consistent with their custody facility plan. This includes refusing mandatory programming or being terminated from a mandatory program assignment for documented negative or substandard performance. An offender 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.

- Offenders previously determined qualified to receive fifty percent earned time will participate in programming or activities targeted in the custody facility plan. The offender will not be penalized if programs and activities are not available.

(iii) They refuse any transfer, excluding work release. Earned time will not be earned for any calendar month the offender refuses assignment.

(iv) They serve twenty days or more in one calendar month in administrative segregation or disciplinary segregation for negative behavior or unfounded/unsubstantiated protection concerns. The offender is eligible to begin earning earned time when the superintendent approves transfer or return to general population. Offenders who are approved for transfer to general population and are scheduled for release to the community within sixty days will earn earned time unless found guilty of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release.

(v) They are serving the mandatory or flat time enhancement portion of their sentence, except for indeterminate offenders sentenced for crimes committed before July 1, 1984.

(vi) Offenders will receive a written record of all earned time denials.

(4) Offenders are not eligible for fifty percent earned time if the offender's risk management level is changed to high risk violent or high risk nonviolent; high risk violent or

high risk nonviolent offenders may earn up to one-third of the sentence.

[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 release 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 or adopted by the ISRB, it cannot be returned to the offender without prior approval of the ISRB.

(2) At a regularly scheduled review, offenders may request restoration of good conduct time from the superintendent/CCS where the offender is housed.

(3) When the decision is made by the superintendent/CCS where the offender is housed, that decision is final and the offender may not request subsequent reviews for the same infractions.

(4) The unit team may recommend approval provided:

(a) The good conduct time has not been adopted by the ISRB, if the case requires an ISRB hearing for release;

(b) The offender has been free of serious infractions violations for at least one year from the date of the last serious infraction;

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(c) The offender is not within six months of his/her ERD and the restoration will not put the offender less than one hundred twenty days to release;

(d) During the current incarceration, for the period of ten years prior to the request for restoration the offender has not committed a category A infraction;

(e) During the current incarceration, for the period of five years prior to the request for restoration, the offender has not committed a category A infraction 601 or 602;

(f) During the current incarceration, for the period of three years prior to the request for restoration, the offender has not committed a category A infraction 507, 603, 650, or 651.

(5) Review:

(a) The director or the deputy director may review and restore good conduct time for category A violations. This decision cannot be delegated below the deputy director level.

(b) The superintendent/CCS may review and restore good conduct time for category B and C violations.

(6) Good conduct time lost as the result of infraction 557, 810, 813 (related to employment or programming while in work release) or 857 will not be restored.

(7) When making the decision whether to restore good conduct time, the director/deputy director, or the superintendent/CCS will consider:

(a) Length of positive program participation;

(b) Period of infraction free behavior;

(c) Nature of infractions;

(d) Overall behavior during the commitment period; and

(e) Unit team recommendation.

[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 violation, 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.]