

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. 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. 11-11-018, § 137-30-020, filed 5/9/11, effective 6/9/11.]

WAC 137-30-030 Eligibility. (1) **ERT.** The following offenders may receive ERT:

(a) Offenders convicted of a serious violent offense or a class A felony sex offense, committed after June 30, 1990, and before July 1, 2003, the ERT may not exceed fifteen percent of their sentence.

(b) Offenders convicted of a serious violent offense, or a class A felony sex offense, committed after June 30, 2003, the ERT may not exceed ten percent of their sentence.

(c) Regardless of the date of offense or the date of sentencing, offenders convicted before July 2, 2010, who are classified as moderate or low risk, may earn ERT up to fifty percent of their sentence: Provided, That they have not been convicted of or have a prior conviction of a:

(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 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 felony committed while under community supervision.

(d) Offenders may earn ERT up to one-third of the sentence in all other cases not identified in this section.

(e) 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.

(f) Offenders found guilty of infractions 557 or 810 (WAC 137-25-030) will lose available ERT and privileges as outlined by DOC Policy 320.150 - Disciplinary Sanctions and will lose their fifty percent eligibility. Offenders found guilty of infraction 813, related to employment or programming while in work release, will also lose 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; and

(ii) Offenders serving the mandatory enhancement portion of their sentences.

(b) Good conduct time will be applicable to all class A, B, and C felonies, except that:

(i) Indeterminate offenders cannot earn good conduct time if their minimum term has expired and they have not been paroled or transferred to a consecutive sentence.

(ii) Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.

(c) Offenders may fail to earn good conduct time if found guilty of serious infractions listed in WAC 137-25-030 and sanctioned per DOC Policy 320.150 Disciplinary Sanctions.

(d) A sentence reduction based on good conduct time will be established for each offender and computed on a pro

rata basis for every thirty-day period served, as allowed by the offender's crime category.

(e) 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.

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

(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-hundredth days;

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

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

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

(b) An offender who disagrees with the risk assessment results has the right to appeal to the superintendent of the facility where the decision was made within forty-eight hours of notification per DOC Policy 320.400 Risk Assessment Process.

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

(i) They are serving an indeterminate sentence and:

(A) The cause has been extended to the maximum term by the ISRB; or

(B) The ISRB has 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 a mandatory work/school/program assignment or being terminated from a mandatory work/school/program for documented negative or substandard performance.

• 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. No earned time, at the appropriate earned time percentage as allowed by crime category, will be granted for each calendar month the offender refuses assignment.

(iv) They serve twenty days or more in one calendar month in administrative segregation/intensive management status or disciplinary segregation. Loss of earned time will be calculated as allowed per crime category. The offender is not eligible to begin earning earned time until the superintendent approves placement in general population. Offenders who are approved for transfer to general population and are scheduled for release to the community within sixty days will not lose earned time unless found guilty of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release. For other than negative behavior, offenders on administrative segregation/intensive management status will continue to earn earned time at the rate allowed by crime category.

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

(vi) At a classification hearing where earned time will be addressed, the offender will receive a written record of his/her earned time at least twenty-four hours prior to the scheduled classification review if earned time is not earned. Action taken by the committee is final and cannot be appealed.

(vii) Earned time not earned 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.

(viii) 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 72.09.130, 72.01.090, and 9.95.070. 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 a 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. 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. 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 e-mail 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. 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 (5/9/11)

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;

(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. 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 violators confined in a department facility for sanction time are eligible for ERT good time credits at the rate of one-third of the sanction.

(3) 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 72.09.130, 72.01.090, and 9.95.070. 11-11-018, § 137-30-080, filed 5/9/11, effective 6/9/11.]