

WSR 22-03-094

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed January 18, 2022, 4:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-09-114.

Title of Rule and Other Identifying Information: Chapter 137-30 WAC, eligibility, earned release time.

Hearing Location(s): On February 24, 2022, at 2:00 p.m., Microsoft Teams meeting. Please contact rules coordinator at vvchebotar@doc1.wa.gov to register. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Date of Intended Adoption: March 24, 2022.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections (DOC), Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email vvchebotar@doc1.wa.gov, by February 17, 2022.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, senior contracts attorney, email vvchebotar@doc1.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule makes administrative changes, as necessary, to ensure WAC complies with department policy. Also, to create equity for incarcerated individuals assigned to MAX custody by allowing them to accrue earned time while assigned to MAX, as long as they were in compliance with their assignment requirements.

Reasons Supporting Proposal: WAC should accurately comply with department policy.

Statutory Authority for Adoption: RCW 72.01.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Bowen, DOC Headquarters, 360-507-0771; Implementation and Enforcement: John Campbell, DOC Headquarters, 360-725-8207.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

January 18, 2022
Cheryl Strange
Secretary

OTS-2979.2

AMENDATORY SECTION (Amending WSR 15-08-066, filed 3/30/15, effective 4/30/15)

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

(a) (~~Offenders~~) 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 fifteen percent of their sentence; and

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

(b) (~~Offenders~~) Incarcerated individuals 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~~) Incarcerated individuals 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~~) 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) (~~Offenders~~) Incarcerated individuals 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~~) 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 ~~((offenders))~~ incarcerated individuals will be eligible for good conduct time, except:

(i) ~~((offenders))~~ incarcerated individuals sentenced to death or life without parole;

(ii) ~~((offenders))~~ 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) ~~((offenders))~~ incarcerated individuals sanctioned to community custody prison return or community custody inmate termination; and

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

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

(ii) Determinate ~~((offenders))~~ 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.

~~((3))~~ **(4) Earned time.**

(a) ~~((offenders))~~ 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 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 ~~((7~~

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

(b) ~~((offenders))~~ incarcerated individuals 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)) 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 twenty 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 ((mandatory)) programming as determined through the classification process and consistent with their case/custody facility plan. This includes refusing ((mandatory)) programming or being terminated from a ((mandatory)) program assignment for documented negative or substandard performance. An ((offender)) 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.~~

~~(• 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.) (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 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.]

AMENDATORY SECTION (Amending WSR 11-11-018, 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))~~ and adopted by the ISRB, it cannot be returned to the ~~((offender))~~ individual 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.) 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 ten 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 one hundred 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 one hundred twenty days of the ERD;

(c) Be targeted for completion at least ten 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 fifty percent.

(b) Category B violations - Minimum of fifty percent up to one hundred percent.

(c) Category C violations - Minimum of seventy-five percent up to one hundred 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 six 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 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-070, filed 5/9/11, effective 6/9/11.]