

# SENATE BILL REPORT

## ESSB 5990

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As Passed Senate, March 26, 2003

**Title:** An act relating to times and supervision standards for release of offenders.

**Brief Description:** Changing times and supervision standards for release of offenders.

**Sponsors:** Senate Committee on Children & Family Services & Corrections (originally sponsored by Senators Hargrove, Stevens, McAuliffe, Carlson, Regala, Parlette, Rasmussen and Winsley).

**Brief History:**

**Committee Activity:** Children & Family Services & Corrections: 2/28/03 [DPS].  
Passed Senate: 3/26/03, 41-8.

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### SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

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**Majority Report:** That Substitute Senate Bill No. 5990 be substituted therefor, and the substitute bill do pass.

Signed by Senators Stevens, Chair; Parlette, Vice Chair; Carlson, Deccio, Hargrove, McAuliffe and Regala.

**Staff:** Fara Daun (786-7459)

**Background:** "Earned release" means the amount of time by which an offender can reduce the amount of time he or she is confined. It is earned by successful participation in required work, education, treatment, and other programming and by appropriate behavior. It can be lost in a disciplinary hearing for infractions or by a refusal to participate in required programming. Earned release time is not discretionary for the Department of Corrections (DOC). Maximum amounts of earned release are set in statute. Under current law, offenders convicted of a serious violent offense or a sex offense that is a class A felony are eligible for a maximum of 15 percent earned release time. All other offenders are eligible for a maximum of 33 percent earned release time.

Community custody, community placement, and community supervision are terms to describe different kinds of supervision in the community. Whether a sentence includes a requirement for supervision in the community depends on the crime. In 1999, the Offender Accountability Act (OAA) expanded the list of crimes subject to supervision in the community to all sex offenses, violent offenses, crimes against persons, and drug offenses. Offenders convicted of other crimes are not supervised after release from prison. The OAA also eliminated the use of community placement and community supervision for crimes committed after July 1, 2000. Community custody applies to these crimes. Under community custody, DOC has the opportunity to require conditions of supervision in addition to those required by the court.

In the case of felony offenders sentenced to jail, the current law permits the court to add a term of community custody up to one year onto any sentence, including those that would not be eligible for community custody if the offender were sentenced to prison.

The OAA also required DOC to use a validated risk assessment tool and to move from a policy of trying to spread supervision resources equally over all offenders to a policy of focusing resources on the offenders in the highest risk management categories. The current practice sorts offenders into four risk management categories from "A" (greatest risk) to "D" (least risk). Under the OAA, most DOC supervision resources go to offenders in risk management categories "A" and "B," who may also have an interdisciplinary team. Offenders in risk management categories "C" and "D" usually check in with their community corrections officer electronically. Those offenders classified as "C" or "D" who are sentenced to court-ordered treatment under the special sex offender sentencing alternative, the drug offender sentencing alternative, and the drug sentencing reform act of 2001 are supervised with regard to their court ordered treatment. Otherwise, offenders classified as "D" are actively supervised only if a violation of a release condition is brought to the attention of the department.

No changes to the maximum terms of earned release or to which offenders will be supervised in the community may be made without statutory change by the Legislature.

**Summary of Bill:** Offenders convicted of serious violent offenses or sex offenses that are class A felonies committed after July 1, 2003 are able to earn a maximum of 10 percent earned release time.

Offenders convicted of offenses that are not subject to supervision in the community and offenders convicted of drug offenses may earn a maximum of 50 percent earned release time. This increase does not apply to any offender with:

- An offender score greater than 6
- A prior conviction for a sex offense or a serious violent offense
- Any conviction for methamphetamine manufacture, delivery or possession with intent to deliver
- Any conviction for delivering a controlled substance to a minor
- Court-ordered drug treatment under the drug offender sentencing alternative (DOSA) or the Drug Sentence Reform Act of 2002.

The increase to a maximum of 50 percent earned release applies retroactively and prospectively and expires July 1, 2010. No offender convicted after July 1, 2003 has a reasonable expectation or enforceable interest in his or her earned release time under the due process clause and the Legislature retains the right to change the maximum amount of earned release for which offenders are eligible.

For offenders sentenced to less than one year (a jail sentence), courts may impose a term of community custody up to one year only if the crime for which the offender is convicted is a sex offense, violent offense, crime against a person, or a drug offense.

DOC must perform a risk assessment on offenders with sentences to community custody, community placement, or community supervision and classify the offender into one of at least

four risk management classifications, from highest to lowest. DOC must supervise those offenders classified in the two highest risk management classifications and is not authorized to supervise those offenders in the other risk management classifications unless the offender has:

- A prior conviction for a sex offense or a serious violent offense
- Any conviction for methamphetamine manufacture, delivery or possession with intent to deliver
- Any conviction for delivering a controlled substance to a minor
- Court-ordered treatment under the special sex offender sentencing alternative (SSOSA), DOSA, or the Drug Sentence Reform Act of 2002
- Been transferred to Washington under the Interstate Compact for Adult Offender Supervision.

The change to which offenders are supervised applies retroactively and prospectively and expires July 1, 2010.

The Washington State Institute for Public Policy must study whether the changes to earned release impact the rate of recidivism or the types of crimes committed and report to the Legislature by December 1, 2009.

The Drug Sentence Reform Act is implemented July 1, 2003.

Seven million dollars of the savings are to be used to enhance community corrections officer supervision of high risk offenders.

**Appropriation:** None.

**Fiscal Note:** Requested on February 26, 2003.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2003.

**Testimony For:** This bill represents a thoughtful approach to an issue that would not come up in less difficult financial times. Many of the judges' concerns with the Governor's proposal have been addressed, particularly around resentencing and earned release. The judges want supervision not only for drug treatment orders, but also the other types of treatment orders placed into sentences. This bill is simpler to implement. While recognizing the fiscal realities, victims are concerned with offenders in addition to sex offenders and would like some clarification on how many offenders this proposal would cover, as well as making sure that it is tied to the requirement for collections of legal financial obligations, which is, at the moment in other legislation.

**Testimony Against:** None.

**Testified:** Senator Jim Hargrove, prime sponsor (pro); Martha Harden, Superior Court Judges Association (comments); Suzanne Brown, Washington Coalition of Sexual Assault Programs (concerns); Joseph D. Lehman, Secretary, Department of Corrections (pro).

**House Amendment(s):** The House incorporated all of ESSB 6002, relating to the collection of legal financial obligations, into this bill. There were no changes made to the provisions from ESSB 6002. Offenders excluded from eligibility to earn 50 percent earned release time also include those with current or prior convictions for residential burglary and felony domestic violence. The amendment replaces the exclusion for an offender score greater than six with a risk assessment and exclusion of offenders classified as risk management level A or B. In addition to those offenders that the Senate language required DOC to supervise, DOC must supervise any offender with a community custody term in his or her sentence that has a current or prior conviction for residential burglary or felony domestic violence. The \$7 million appropriation for enhanced supervision of risk management A or B offenders is not included.