

CERTIFICATION OF ENROLLMENT
SECOND ENGROSSED SUBSTITUTE SENATE BILL 5892

63rd Legislature
2013 2nd Special Session

Passed by the Senate June 28, 2013
YEAS 39 NAYS 9

President of the Senate

Passed by the House June 27, 2013
YEAS 55 NAYS 36

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SUBSTITUTE SENATE BILL 5892** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

1 References to months represent the standard sentence ranges. 12+
2 equals one year and one day.

3 (2) The court may utilize any other sanctions or alternatives as
4 authorized by law, including but not limited to the special drug
5 offender sentencing alternative under RCW 9.94A.660 or drug court under
6 RCW 2.28.170.

7 (3) Nothing in this section creates an entitlement for a criminal
8 defendant to any specific sanction, alternative, sentence option, or
9 substance abuse treatment.

10 **Sec. 2.** RCW 9.94A.729 and 2011 1st sp.s. c 40 s 4 are each amended
11 to read as follows:

12 (1)(a) The term of the sentence of an offender committed to a
13 correctional facility operated by the department may be reduced by
14 earned release time in accordance with procedures that shall be
15 developed and adopted by the correctional agency having jurisdiction in
16 which the offender is confined. The earned release time shall be for
17 good behavior and good performance, as determined by the correctional
18 agency having jurisdiction. The correctional agency shall not credit
19 the offender with earned release credits in advance of the offender
20 actually earning the credits.

21 (b) Any program established pursuant to this section shall allow an
22 offender to earn early release credits for presentence incarceration.
23 If an offender is transferred from a county jail to the department, the
24 administrator of a county jail facility shall certify to the department
25 the amount of time spent in custody at the facility and the ~~((amount))~~
26 number of days of ~~((earned))~~ early release ~~((time))~~ credits lost or not
27 earned. The department may approve a jail certification from a
28 correctional agency that calculates ~~((earned))~~ early release time based
29 on the actual amount of confinement time served by the offender before
30 sentencing when an erroneous calculation of confinement time served by
31 the offender before sentencing appears on the judgment and sentence.
32 The department must adjust an offender's rate of early release listed
33 on the jail certification to be consistent with the rate applicable to
34 offenders in the department's facilities. However, the department is
35 not authorized to adjust the number of presentence early release days
36 that the jail has certified as lost or not earned.

1 (2) An offender who has been convicted of a felony committed after
2 July 23, 1995, that involves any applicable deadly weapon enhancements
3 under RCW 9.94A.533 (3) or (4), or both, shall not receive any good
4 time credits or earned release time for that portion of his or her
5 sentence that results from any deadly weapon enhancements.

6 (3) An offender may earn early release time as follows:

7 (a) In the case of an offender convicted of a serious violent
8 offense, or a sex offense that is a class A felony, committed on or
9 after July 1, 1990, and before July 1, 2003, the aggregate earned
10 release time may not exceed fifteen percent of the sentence.

11 (b) In the case of an offender convicted of a serious violent
12 offense, or a sex offense that is a class A felony, committed on or
13 after July 1, 2003, the aggregate earned release time may not exceed
14 ten percent of the sentence.

15 (c) An offender is qualified to earn up to fifty percent of
16 aggregate earned release time if he or she:

17 (i) Is not classified as an offender who is at a high risk to
18 reoffend as provided in subsection (4) of this section;

19 (ii) Is not confined pursuant to a sentence for:

20 (A) A sex offense;

21 (B) A violent offense;

22 (C) A crime against persons as defined in RCW 9.94A.411;

23 (D) A felony that is domestic violence as defined in RCW 10.99.020;

24 (E) A violation of RCW 9A.52.025 (residential burglary);

25 (F) A violation of, or an attempt, solicitation, or conspiracy to
26 violate, RCW 69.50.401 by manufacture or delivery or possession with
27 intent to deliver methamphetamine; or

28 (G) A violation of, or an attempt, solicitation, or conspiracy to
29 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

30 (iii) Has no prior conviction for the offenses listed in (c)(ii) of
31 this subsection;

32 (iv) Participates in programming or activities as directed by the
33 offender's individual reentry plan as provided under RCW 72.09.270 to
34 the extent that such programming or activities are made available by
35 the department; and

36 (v) Has not committed a new felony after July 22, 2007, while under
37 community custody.

1 (d) In no other case shall the aggregate earned release time exceed
2 one-third of the total sentence.

3 (4) The department shall perform a risk assessment of each offender
4 who may qualify for earned early release under subsection (3)(c) of
5 this section utilizing the risk assessment tool recommended by the
6 Washington state institute for public policy. Subsection (3)(c) of
7 this section does not apply to offenders convicted after July 1, 2010.

8 (5)(a) A person who is eligible for earned early release as
9 provided in this section and who will be supervised by the department
10 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to
11 community custody in lieu of earned release time;

12 (b) The department shall, as a part of its program for release to
13 the community in lieu of earned release, require the offender to
14 propose a release plan that includes an approved residence and living
15 arrangement. All offenders with community custody terms eligible for
16 release to community custody in lieu of earned release shall provide an
17 approved residence and living arrangement prior to release to the
18 community;

19 (c) The department may deny transfer to community custody in lieu
20 of earned release time if the department determines an offender's
21 release plan, including proposed residence location and living
22 arrangements, may violate the conditions of the sentence or conditions
23 of supervision, place the offender at risk to violate the conditions of
24 the sentence, place the offender at risk to reoffend, or present a risk
25 to victim safety or community safety. The department's authority under
26 this section is independent of any court-ordered condition of sentence
27 or statutory provision regarding conditions for community custody;

28 (d) If the department is unable to approve the offender's release
29 plan, the department may do one or more of the following:

30 (i) Transfer an offender to partial confinement in lieu of earned
31 early release for a period not to exceed three months. The three
32 months in partial confinement is in addition to that portion of the
33 offender's term of confinement that may be served in partial
34 confinement as provided in RCW 9.94A.728(5);

35 (ii) Provide rental vouchers to the offender for a period not to
36 exceed three months if rental assistance will result in an approved
37 release plan. The voucher must be provided in conjunction with
38 additional transition support programming or services that enable an

1 offender to participate in services including, but not limited to,
2 substance abuse treatment, mental health treatment, sex offender
3 treatment, educational programming, or employment programming;

4 (e) For each offender who is the recipient of a rental voucher, the
5 department shall include, concurrent with the data that the department
6 otherwise obtains and records, the housing status of the offender for
7 the duration of the offender's supervision.

8 (6) An offender serving a term of confinement imposed under RCW
9 9.94A.670(5)(a) is not eligible for earned release credits under this
10 section.

11 **Sec. 3.** RCW 9.92.151 and 2009 c 28 s 3 are each amended to read as
12 follows:

13 (1) Except as provided in subsection (2) of this section, the
14 sentence of a prisoner confined in a county jail facility for a felony,
15 gross misdemeanor, or misdemeanor conviction may be reduced by earned
16 release credits in accordance with procedures that shall be developed
17 and promulgated by the correctional agency having jurisdiction. The
18 earned early release time shall be for good behavior and good
19 performance as determined by the correctional agency having
20 jurisdiction. Any program established pursuant to this section shall
21 allow an offender to earn early release credits for presentence
22 incarceration. The correctional agency shall not credit the offender
23 with earned early release credits in advance of the offender actually
24 earning the credits. In the case of an offender convicted of a serious
25 violent offense or a sex offense that is a class A felony committed on
26 or after July 1, 1990, the aggregate earned early release time may not
27 exceed fifteen percent of the sentence. In no other case may the
28 aggregate earned early release time exceed one-third of the total
29 sentence.

30 (2) An offender serving a term of confinement imposed under RCW
31 9.94A.670(5)(a) is not eligible for earned release credits under this
32 section.

33 (3) If an offender is transferred from a county jail to the
34 department, the administrator of a county jail facility shall certify
35 to the department the amount of time spent in custody at the facility
36 and the number of days of early release credits lost or not earned.

1 NEW SECTION. **Sec. 4.** Pursuant to RCW 9.94A.729, the department
2 shall recalculate the earned release date for any offender currently
3 serving a term in a facility or institution either operated by the
4 state or utilized under contract. The earned release date shall be
5 recalculated whether the offender is currently incarcerated or is
6 sentenced after the effective date of this section, and regardless of
7 the offender's date of offense. For offenders whose offense was
8 committed prior to the effective date of this section, the
9 recalculation shall not extend a term of incarceration beyond that to
10 which an offender is currently subject.

11 NEW SECTION. **Sec. 5.** (1)(a) The department must, in consultation
12 with the caseload forecast council, compile the following information
13 in summary form for the two years prior to and after the effective date
14 of this section: For offenders sentenced under RCW 9.94A.517 for a
15 seriousness level I offense where the offender score is three to five:
16 (A) The total number of sentences and the average length of sentence
17 imposed, sorted by sentences served in state versus local correctional
18 facilities; (B) the number of current and prior felony convictions for
19 each offender; (C) the estimated cost or cost savings, total and per
20 offender, to the state and local governments from the change to the
21 maximum sentence pursuant to RCW 9.94A.517(1); and (D) the number of
22 offenders who were sentenced to community custody, the number of
23 violations committed on community custody, and any sanctions imposed
24 for such violations.

25 (b) The department must submit a report with its findings to the
26 office of financial management and the appropriate fiscal and policy
27 committees of the house of representatives and the senate by January 1,
28 2015, and January 1, 2018.

29 (2) For purposes of this section, "department" means the department
30 of corrections.

31 NEW SECTION. **Sec. 6.** The legislature declares that section 4 of
32 this act does not create any liberty interest. The department is
33 authorized to take the time reasonably necessary to complete the
34 recalculations of section 4 of this act after the effective date of
35 this section.

1 NEW SECTION. **Sec. 7.** Section 1 of this act applies to sentences
2 imposed on or after July 1, 2013, regardless of the date of offense.

3 NEW SECTION. **Sec. 8.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 2013.

11 NEW SECTION. **Sec. 10.** Sections 1 and 5 of this act expire July 1,
12 2018.

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