

HOUSE BILL REPORT

HB 1282

As Reported by House Committee On:
Public Safety

Title: An act relating to allowed earned time for certain offenses.

Brief Description: Concerning allowed earned time for certain offenses.

Sponsors: Representatives Simmons, Johnson, J., Hansen, Ramel, Frame, Dolan, Bateman, Fitzgibbon, Ryu, Berry, Peterson, Davis, Hackney, Fey, Thai, Gregerson, Macri, Callan, Ormsby, Pollet, Senn and Ramos; by request of Department of Corrections.

Brief History:

Committee Activity:

Public Safety: 2/2/21, 2/11/21 [DPS].

Brief Summary of Substitute Bill

- Modifies earned release time provisions to allow aggregate earned release time of up to one-third of the sentence for all categories that qualify for earned time.
- Removes the current law prohibition on earned release time for firearm, deadly weapon, sexual motivation, and impaired driving enhancements.
- Allows earned release time to accrue during mandatory minimum terms.
- Applies changes to earned release time prospectively and retroactively, and requires the Department of Corrections to recalculate earned release dates for those currently incarcerated.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Lovick, Orwall, Ramos and Simmons.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 5 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham, Griffey and Young.

Staff: Omeara Harrington (786-7136).

Background:

An offender's felony sentence may be reduced by "earned release time," which is earned through good behavior and good performance, as determined by the correctional agency that has jurisdiction over the offender. An offender can accumulate earned release time while serving a sentence and during pre-sentence incarceration.

The total percentage of the sentence that may be reduced by earned release time depends on various factors, including the underlying offense and when the offense was committed. In general, for sentences eligible for earned release time, the aggregate earned release time may not exceed one-third of the total sentence. However, there are several exceptions to this general rule. The earned release time eligibility rate is 50 percent for offenders meeting certain criteria who were convicted between July 1, 2003, and July 1, 2010. Earned release time for offenders convicted of a serious violent offense or a class A felony sex offense that was committed between July 1, 1990, and July 1, 2003, is limited to 15 percent; if the offense was committed on or after July 1, 2003, the earned release time rate is 10 percent.

Certain sentences, or portions of sentences, are not eligible for earned release time. There is no earned release time eligibility for offenders sentenced under the Special Sex Offender Sentencing Alternative. An offender may not receive any earned release time for the portion of the sentence that results from certain enhancements specified in statute, including firearm and deadly weapons enhancements, impaired driving enhancements, and sexual motivation enhancements. An offender also may not receive any earned release time on a mandatory minimum sentence. For an offender sentenced for the crime of Aggravated Murder in the first degree committed under the age of 18, which is an indeterminate sentence that includes a mandatory minimum term, the minimum term is not eligible for earned time, but for any extension of the sentence past the mandatory minimum term the offender may accrue earned time up to 10 percent of the remaining sentence.

Summary of Substitute Bill:

For all sentences and portions of sentences eligible for earned release time, the earned release time rate is one-third of the total sentence. Current law policies limiting earned release time to 10 percent or 15 percent are replaced with the one-third rate, and the former policy allowing 50 percent earned release time for certain offenders is removed.

Additionally, certain current law prohibitions on earned release time are removed. Firearm

and deadly weapon enhancements, sexual motivation enhancements, and impaired driving enhancements are eligible for earned release time at the same rate as the underlying offense. Earned time may also accrue during mandatory minimum terms; however, the person subject to the mandatory minimum term may not be released prior to serving the entire minimum term.

The changes to earned release rates and eligibility apply prospectively and retroactively. The Department of Corrections (DOC) must recalculate the earned release date for any offender currently serving a sentence, regardless of the date of the offense. For offenders whose offense was committed prior to the effective date of the bill, the recalculation must not extend the term of incarceration beyond that to which the offender is currently subject. The DOC has discretion to recalculate the earned release date for any qualifying offender over a period of 12 months following the effective date of the bill.

Substitute Bill Compared to Original Bill:

Sexual motivation enhancements are eligible for earned release time, in addition to firearm, deadly weapon, and impaired driving enhancements in the underlying bill. Earned release time may accrue during mandatory minimum terms. The provision stating that there is no expectation that the percentage of earned release time will be recalculated for currently incarcerated people before July 1, 2021, is changed to instead reference the effective date of the bill. The DOC is required to recalculate earned release dates within the 12 months following enactment of the bill, rather than within the time reasonably necessary to perform recalculations. Amendatory sections are included to harmonize related provisions of the code with the changes in the bill.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 11, 2021.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 2, repeating the earned release time policies in section 1, which due to a delayed effective date in prior legislation takes effect January 1, 2022.

Staff Summary of Public Testimony:

(In support) This is a very important bill brought by the DOC that will result in a more humane and just system that achieves true public safety. The policy stems from a consensus-driven recommendation by the Criminal Sentencing Task Force to increase the percentage of allowed earned time for certain crimes in a way that achieves greater consistency. This bill reinstates policies that were changed in the early 2000s. Savings from the bill can be reinvested in victims' services and reentry programs. It also gives

incarcerated people something to work for. This will be one of the few policies the Legislature has passed that actually decreases racial disparity in the prison system. The majority of survivors favor shortened sentences, and instead want healing. This bill brings Washington closer to being a state that is free from violence.

Earned time is a management tool, and one of the few tools available to the DOC to address disparity and incentivize good behavior. The earned release date is the earliest someone can be released, and is a motivator. This tool has been significantly reduced in the years since the adoption of the Sentencing Reform Act (SRA). The SRA abolished parole, but allowed one-third off of the sentence for good behavior. In 2003 earned time was increased to 50 percent for some, and reduced to 10 or 15 percent for others. The Washington State Institute for Public Policy found that those who were at the 50 percent rate had lower recidivism. Recidivism rates have increased or stayed the same under tough-on-crime policies. Returning to the one-third rate will ensure that earned time is accurate. Black and indigenous people are overrepresented in the prison system, and even more so with respect to length of sentence. The DOC does not choose who goes into the system, but this bill will allow the DOC to reverse some of the disproportionality and correct errors of the past. The changes in this bill would reduce the average daily population significantly, saving the state \$19.4 million in the first year and \$26.9 million in the next year. When people are given treatment, housing, and community support, they are less likely to victimize others. This will allow financial reinvestment in those programs.

Washington reduced earned time to qualify for federal grant money under truth-in-sentencing policies, and in the 1980s and 1990s high profile cases justified expansion of incarceration. For decades prosecutors asked for longer sentences. There were large and disproportionate impacts to communities of color. Washington is experiencing mass incarceration and an aging population. This bill will bring great relief to the black community, against whom the criminal justice system has been weaponized. This change is needed to start to dig the state out of bad and racist prior legislation. There is a new generation of prosecutors whose public safety agenda is backed by science; the old policies do not keep communities safe, which is why the bill should be retroactive. There is no racial equity in this if the bill is not applied retroactively. Mandatory minimums should also be addressed. This policy allows sentences to be reduced without affecting public safety. It also reduces complexity, and lowers incarcerated populations during the COVID-19 pandemic.

Earned time does have to be earned, and avoiding infractions is incredibly difficult. The opportunity to earn release time supports public safety by incentivizing people to invest in their own rehabilitation. It shifts behavior patterns, encourages participation in programming, and leads incarcerated people to hold themselves and their peers to a higher level of responsibility. It motivates people to comply with rules, and makes staff, facilities, and communities safer. Ultimately, this bill also supports family reunification. People deserve a chance to move beyond their worst moments. The current system of throwing people in concrete when they commit a crime sets them up to fail and does not lead to

accountability or justice. Removing a person who caused harm does not address the reasons behind their violence. There is a tendency to assume that the crime predicts safety to release, and that is not true. The affected populations have low recidivism rates. These individuals can be successfully supervised and reintegrated into the community even with the bill's retroactive application. Supporting this bill and supporting survivors is not mutually exclusive. It is false that all victims want longer sentences; in reality, many want the person who harmed them to change. Most incarcerated people are survivors as well, and the incarcerated population is steeped in trauma.

(Opposed) There are problems with the sweeping retroactive application of these policies, which result in significant sentence reductions. Most guilty pleas are negotiated between the prosecution and the defense, and the court imposes sentences on a case-by-case basis. As an example, in one case a person went to his girlfriend's home and stabbed her while her children were in earshot. A long plea negotiation ensued, as the family did not want the children to have to testify. Under this proposal, there would be a significant reduction in the sentence served and, had that been known, the case would have been approached differently. These changes come at the biggest benefit to the worst offenders, as lower-level offenders already get the earned-time rate set in the bill. Serious violent and sex offenders pose serious public safety risks. Prior changes to allow higher rates of earned time mostly applied to property offenders, which are vastly different than serious violent and sex offenders. Prosecutors can use other tools, like clemency and resentencing to remedy issues on a case-by-case basis. The criminal justice system is nuanced and complex, but there are better ways to approach this issue, and the bill should be prospective only. The Criminal Sentencing Task Force should look at this issue holistically.

(Other) Earned release time is not earned by those in custody; it is presumptively granted. Language should be added allowing a person to earn time through participation in programming and good behavior. This bill proposes to save millions of dollars, and there is optimism about reinvestment, but this is a permanent change. Rather than a one-time change in the budget, savings from this bill and prior bills should be recaptured through a statutorily created system and put toward reentry and reinvestment programs.

Persons Testifying: (In support) Representative Simmons, prime sponsor; David Heppard, Freedom Project; Duaa-Rahemaah Williams; Melody Simle; Kurtis Robinson; Katherine Beckett, University of Washington, Law, Societies & Justice Department; Christopher Poulos; Chelsea Moore; Sharon Jackson Monson, Presbyterian Church; Stephan Thomas; Stephen Sinclair, Julie Martin, and Melena Thompson, Department of Corrections; Martina Kartman, Collective Justice NW; Priya Rai, API Chaya; Paul Sutton, Community Passageways; and Felix Sitthivong.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys; Andy Miller, Benton County Prosecutor's Office; and Mary Robnett, Pierce County Prosecuting Attorney's Office.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: Noreen Light; Jayme Longoria; Kendra Wynn; Virginia Parham, Washington College Access Network; Kristen Hunt; Bruce Glant; Dan Wright, Kathleen Hambrick, and Heidi Brodt, CAGE; Heather Johnson; Jason Arbogast; Kehaulani Walker, Families of the Incarcerated; Chanda Emery; Stephanie Beidman, New Beginnings Counseling and Support Services; JaneLee Waldock; Kelly Johnson, University Beyond Bars; Rachael SeEVERS, Disability Rights Washington; Nick Straley, Columbia Legal Services; Greg Link, Washington Appellate Project; Matt Hays; Rachel Bisbee; Qi Wan; and Rocio Lopez.