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HOUSE BILL 1798

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State of Washington

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2023 Regular Session

By Representatives Doglio, Simmons, Reed, Ormsby, and Gregerson; by request of Department of Corrections

Read first time 02/08/23. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to allowed earned release time for certain  
2 offenses and enhancements; amending RCW 9.94A.729; and creating new  
3 sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.94A.729 and 2022 c 29 s 1 are each amended to read  
6 as follows:

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

16 (b) Any program established pursuant to this section shall allow  
17 an offender to earn ((early)) earned release time credits for  
18 presentence incarceration. If an offender is transferred from a  
19 county jail to the department, the administrator of a county jail  
20 facility shall certify to the department the amount of time spent in  
21 custody at the facility and the number of days of ((early)) earned

1 release time credits lost or not earned. The department may approve a  
2 jail certification from a correctional agency that calculates  
3 ((early)) earned release time based on the actual amount of  
4 confinement time served by the offender before sentencing when an  
5 erroneous calculation of confinement time served by the offender  
6 before sentencing appears on the judgment and sentence. The  
7 department must adjust an offender's rate of ((early)) earned release  
8 time listed on the jail certification to be consistent with the rate  
9 applicable to offenders in the department's facilities. However, the  
10 department is not authorized to adjust the ((number)) amount of  
11 presentence ((early release days)) earned release time that the jail  
12 has certified as lost or not earned.

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

19 ~~(b) An offender whose sentence includes any impaired driving~~  
20 ~~enhancements under RCW 9.94A.533(7), minor child enhancements under~~  
21 ~~RCW 9.94A.533(13), or both, shall not receive any good time credits~~  
22 ~~or earned release time for any portion of his or her sentence that~~  
23 ~~results from those enhancements.~~

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

25 ~~(a) In the case of an offender sentenced pursuant to RCW~~  
26 ~~10.95.030(3) or 10.95.035, the offender may not receive any earned~~  
27 ~~early release time during the minimum term of confinement imposed by~~  
28 ~~the court; for any remaining portion of the sentence served by the~~  
29 ~~offender, the aggregate earned release time may not exceed 10 percent~~  
30 ~~of the sentence.~~

31 ~~(b) In the case of an offender convicted of a serious violent~~  
32 ~~offense, or a sex offense that is a class A felony, committed on or~~  
33 ~~after July 1, 1990, and before July 1, 2003, the aggregate earned~~  
34 ~~release time may not exceed 15 percent of the sentence.~~

35 ~~(c) In the case of an offender convicted of a serious violent~~  
36 ~~offense, or a sex offense that is a class A felony, committed on or~~  
37 ~~after July 1, 2003, the aggregate earned release time may not exceed~~  
38 ~~10 percent of the sentence.~~

39 ~~(d) An offender is qualified to earn up to 50 percent of~~  
40 ~~aggregate earned release time if he or she:~~

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

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

4 ~~(A) A sex offense;~~

5 ~~(B) A violent offense;~~

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

7 ~~(D) A felony that is domestic violence as defined in RCW~~  
8 ~~10.99.020;~~

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

10 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
11 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
12 ~~intent to deliver methamphetamine; or~~

13 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
14 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a~~  
15 ~~minor);~~

16 ~~(iii) Has no prior conviction for the offenses listed in (d) (ii)~~  
17 ~~of this subsection;~~

18 ~~(iv) Participates in programming or activities as directed by the~~  
19 ~~offender's individual reentry plan as provided under RCW 72.09.270 to~~  
20 ~~the extent that such programming or activities are made available by~~  
21 ~~the department; and~~

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

24 ~~(e) In no other case shall the aggregate earned release time~~  
25 ~~exceed one-third of the total sentence.~~

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

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

36 ~~(b) The department shall, as a part of its program for release to~~  
37 ~~the community in lieu of earned release, require the offender to~~  
38 ~~propose a release plan that includes an approved residence and living~~  
39 ~~arrangement. All offenders with community custody terms eligible for~~  
40 ~~release to community custody in lieu of earned release shall provide~~

1 ~~an approved residence and living arrangement prior to release to the~~  
2 ~~community;~~

3 ~~(c) The department may deny transfer to community custody in lieu~~  
4 ~~of earned release time if the department determines an offender's~~  
5 ~~release plan, including proposed residence location and living~~  
6 ~~arrangements, may violate the conditions of the sentence or~~  
7 ~~conditions of supervision, place the offender at risk to violate the~~  
8 ~~conditions of the sentence, place the offender at risk to reoffend,~~  
9 ~~or present a risk to victim safety or community safety. The~~  
10 ~~department's authority under this section is independent of any~~  
11 ~~court-ordered condition of sentence or statutory provision regarding~~  
12 ~~conditions for community custody;~~

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

15 ~~(i) Transfer an offender to partial confinement in lieu of earned~~  
16 ~~early release for a period not to exceed three months. The three~~  
17 ~~months in partial confinement is in addition to that portion of the~~  
18 ~~offender's term of confinement that may be served in partial~~  
19 ~~confinement as provided in RCW 9.94A.728(1)(e);~~

20 ~~(ii) Provide rental vouchers to the offender for a period not to~~  
21 ~~exceed six months if rental assistance will result in an approved~~  
22 ~~release plan.~~

23 ~~A voucher must be provided in conjunction with additional~~  
24 ~~transition support programming or services that enable an offender to~~  
25 ~~participate in services including, but not limited to, substance~~  
26 ~~abuse treatment, mental health treatment, sex offender treatment,~~  
27 ~~educational programming, or employment programming;~~

28 ~~(e) The department shall maintain a list of housing providers~~  
29 ~~that meets the requirements of RCW 72.09.285. If more than two~~  
30 ~~voucher recipients will be residing per dwelling unit, as defined in~~  
31 ~~RCW 59.18.030, rental vouchers for those recipients may only be paid~~  
32 ~~to a housing provider on the department's list;~~

33 ~~(f) For each offender who is the recipient of a rental voucher,~~  
34 ~~the department shall gather data as recommended by the Washington~~  
35 ~~state institute for public policy in order to best demonstrate~~  
36 ~~whether rental vouchers are effective in reducing recidivism.~~

37 ~~(6) An offender serving a term of confinement imposed under RCW~~  
38 ~~9.94A.670(5)(a) is not eligible for earned release credits under this~~  
39 ~~section.) For any term of confinement set to be completed on or~~  
40 ~~after July 1, 2023, an offender may accrue earned release time up to~~

1 33.33 percent of the total sentence. In the case of consecutive  
2 sentences, the phrase "any term of confinement set to be completed on  
3 or after July 1, 2023," means the sentence currently being served and  
4 any sentences yet to be served, but not any consecutive sentence  
5 previously served by the offender, whether the consecutive sentences  
6 are imposed under one judgment or multiple judgments. This includes  
7 sentence enhancements under RCW 9.94A.533, except that:

8 (a) The following are ineligible for earned release time:

9 (i) A federal sentence served in the department's custody;

10 (ii) An out-of-state sentence served at the department;

11 (iii) A juvenile sentence under Title 13 RCW;

12 (iv) A less restrictive alternative under chapter 71.05 RCW;

13 (v) A civil commitment under chapter 10.77 RCW;

14 (vi) A mandatory minimum sentence under RCW 9.94A.540;

15 (vii) A persistent offender sentence under RCW 9.94A.570;

16 (viii) A special sex offender sentencing alternative under RCW  
17 9.94A.670; and

18 (ix) An aggravated first degree murder sentence imposed on an  
19 adult under RCW 10.95.030.

20 (b) A sentence imposed on a juvenile under RCW 10.95.030 or  
21 10.95.035 is ineligible for earned release time during the minimum  
22 term of confinement imposed by the court; for any remaining portion  
23 of the sentence, the aggregate earned release time may not exceed  
24 33.33 percent.

25 (c) An offender qualified to earn up to 50 percent earned release  
26 time under RCW 9.94A.729 shall not lose earned release time accrued  
27 before July 1, 2023.

28 NEW SECTION. Sec. 2. Pursuant to RCW 9.94A.729, the department  
29 of corrections shall recalculate the earned release date for any  
30 offender currently serving a term of confinement in a facility or  
31 institution either operated by the state or utilized under contract.  
32 The earned release date shall be recalculated whether the offender is  
33 currently incarcerated or is sentenced after the effective date of  
34 this section, and regardless of the offender's date of offense. For  
35 offenders whose offense was committed prior to the effective date of  
36 this section, the recalculation shall apply to any term of  
37 confinement set to be completed on or after July 1, 2023, and shall  
38 not extend a term of incarceration beyond that to which an offender  
39 is currently subject. This act applies to any term of confinement set

1 to be completed on or after July 1, 2023, regardless of the date of  
2 the underlying offense.

3 NEW SECTION. **Sec. 3.** The department of corrections'  
4 recalculations of earned release time pursuant to this act do not  
5 create any expectations that the percentage of earned release time  
6 will be revised before July 1, 2024, and there is no reason to  
7 conclude that the maximum percentage of earned release time is an  
8 entitlement or creates any liberty interest. The department of  
9 corrections is authorized to take the time reasonably necessary to  
10 complete the recalculations of earned release time after the  
11 effective date of this section.

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