

History of Earned Release Time (ERT) in WA

Prepared by Clela Steelhammer, Caseload Forecasting

NOTE: Summary does not include changes to jail ERT calculations.

- **1986:** When the SRA was enacted, all offenses were eligible for good time (earned release time), time awarded for good behavior and good performance that could not exceed one-third of the sentence. *RCW 9.94A.150*
- **1990:** In 1990, Earned Release Time (ERT) calculations were changed to limit ERT to 15% when the offense was a Serious Violent offense or a Class A Sex offense (committed on or after July 1, 1990).
- **1994:** Mandatory minimum term statute was amended to clearly exclude the minimum term from ERT calculations.
- **1995:** For any felonies committed after July 23, 1995 that involved firearms and/or other deadly weapon enhancements, the enhancement portion of the sentence was not eligible for ERT.
- **1997:** The Court of Appeals in *Personal Restraint of Mahrle*, 88 Wn. App. 410 (1997), ruled that the 15% cap on good time credit applies only to Class A Serious Violent Offenses and Class A Sex offenses committed on or after July 1, 1990. All others may earn up to one-third earned early release time (33.3%).
- **1999:** The Court of Appeals in *Personal Restraint of Mahrle*, 88 Wn. App. 410 (1997), ruled that the 15% cap on good time credit applies only to an individual convicted of both a Class A Serious Violent Offense and a Class A Sex Offense, committed on or after July 1, 1990, and that all other individuals may earn up to one-third earned early release time. In response, the 1999 Legislature added punctuation to the provision in *RCW 9.94A.150(1)* limiting earned release time for certain offenses, clarifying that individuals convicted of serious violent offenses and individuals convicted of Class A sex offenses may receive a reduction in confinement time of no more than 15% of the sentence. This language change expressed the Legislature's original intent, and although the *Mahrle* case was not overturned, it no longer applied to future cases.
- **2000:** The SRA was recodified and ERT calculations were moved to *RCW 9.94A.728*.
- **2003:** Lowered ERT from 15% to 10% for an individual convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003.

Allowed for 50% ERT for low or moderate risk individuals that do not have a **current or prior** offense for: violent, sex, crime against a person, DV, residential burglary or certain drug offenses. Applied retrospectively to anyone in prison on July 1, 2003. Included sunset provision – 50% ERT was not allowed for anyone convicted after July 1, 2010.

- **2009:** ERT calculation statutes were removed from *RCW 9.94A.728* and became a new *RCW – 9.94A.729*.

- **2013:** ERT calculations were amended to require DOC to adjust an individual's rate of ERT listed on the jail certification to be consistent with the rate applicable to the time allowed while in DOC's facilities.

History of Earned Release Time Amounts in WA

Prepared by Keri-Anne Jetzer, Sentencing Guidelines Commission

Year	RCW	ERT%	Description of Change
1981	9.92.150	5 days per month (33%)	The sentencing judge of the superior court and the sentencing justice of peace of the justice court shall have authority and jurisdiction whereby the sentence of a prisoner, sentenced to imprisonment in their respective county jail, may be reduced five days for each month of confinement therein, for good behavior.
1981	9.94A.150	33%	In no case shall the aggregate earned early release time exceed one-third of the sentence. Effective date: 7/1/1984 for felonies committed after 6/30/1984
1989	9.94A.150	33%	In no case shall the aggregate earned early release time exceed one-third of the <u>total</u> sentence.
2000	9.94A.150	15%	Serious violent offense or class A sex offense committed on or after 7/1/1990.
2003	9.94A.728	15%	Serious violent offense or class A sex offense committed on or after 7/1/1990 and before 7/1/2003.
		10%	Serious violent offense or class A sex offense committed on or after 7/1/2003.
		50%	Eligible: Lowest two risk levels Retroactive to those serving confinement as of 7/1/2003. Does not apply to convictions after 7/1/2010. Excludes: sex offense, violent offense, Crime Against Person, felony DV, ResBurg, M/D/P w/I Meth (+ anticip), Delv CS to a Minor (+ anticip), any new felony committed under comm supv.
2004	9.94A.728		An offender serving a term of confinement imposed under RCW 9.94A.670(4)(a) [deferred sentenced under SSOSA] is not eligible for earned release credits under this section.
2007	9.94A.728	50%	Eligibility Add: has not committed a new felony after effective date (7/22/2007) of this section while on comm supervision, comm placement or comm custody. Participates in programming or activities as directed by the reentry plan to the extent that such programming or activities are made available by DOC.
2014	9.94A.729	10%	Excludes: persons convicted of Ag Murder 1 and offense committed under 18 years.
2015	9.94A.729	10%	Excludes earned release on minimum term imposed by court when offense of Ag Murder 1 was committed under 18 years of age but allows any remaining portion to become eligible.
2020	9.94A.729		An offender whose sentence includes any impaired driving enhancements under RCW 9.94A.533(7), minor child enhancements under RCW 9.94A.533(13), or both, shall not receive any good time credits or earned release time for any portion of his or her sentence that results from those enhancements. Effective date: 1/1/2022

Earned Release Time DOC Sentences

Prepared by Clela Steelhammer, Caseload Forecasting Council

ERT is the time that an individual can earn, based on good behavior and programming. The credit is applied to the term of confinement as ordered by the court.

Current Definition:

RCW 9.94A.030: Earned Release is the earned release from confinement as provided in RCW 9.94A.728.

RCW 9.94A.728: An offender may earn early release time as authorized by RCW 9.94A.729;

RCW 9.94A.729(1)(a): The term of the sentence of an offender committed to a correctional facility **operated by the department** may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits.

Per DOC policy, ERT is calculated at 2/3 for good-conduct time and 1/3 of earned time.

Credit Allowance:

- Serious Violent or Class A Sex offenses committed on or after July 1, 1990 and before July 1, 2003, may not exceed 15% of the sentence.
- Serious Violent or Class A Sex offenses committed on or after July 1, 2003, may not exceed 10% of the sentence.
- All other offenses are eligible for up to one-third of the total sentence (33.3%)

Exclusions to ERT:

- Firearm and other Deadly Weapon enhancements (RCW 9.94A.533(4) and (5)) – no ERT allowed for the enhancement portion of the sentence.
- Impaired Driving enhancements (RCW 9.94A.533(7) and (13)) – no ERT allowed for the enhancement portion of the sentence.
- Sexual Motivation enhancements (RCW 9.94A.533(8)) – no ERT allowed for the enhancement portion of the sentence.
- For individuals serving confinement under a Sex Offender Sentence Alternative, no ERT is allowed.
- No ERT during mandatory minimum terms: Murder 1 the mandatory minimum is not less than 20 years, Assault 1 or Assault of a Child 1 when force was used likely to result in death or intent was to kill the victim – not less than 5 years, Rape 1- not less than 5 years, Sexually Violent Predator Escape – not less than 60 months, and Aggravated Murder committed prior to age 18 – not less than 25 years.

Earned Release Time Local (Jail) Sentences

Prepared by Clela Steelhammer, Caseload Forecasting Council

For felony sentences other than those for a Serious Violent or Class A sex offense, ERT served at a county jail cannot exceed up to 1/3 of the sentence. Some counties allow individuals to earn up to 1/3 of the sentence and others limit the ERT to less than 1/3. For Serious Violent or a Class A Sex offenses, up to 15% of the sentence can be earned.

For individuals that are sentenced to DOC, the presentence time served at a county jail is subject to the amount of ERT that is allowed for the portion of the sentence served at DOC, if DOC allows a higher rate. For example, an individual serving pre-sentence time at a county facility that only allows 10% ERT, DOC would award ERT credits of 1/3 for the time spent in the county facility prior transferring to DOC.

RCW 9.92.151 Early release for good behavior.

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

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

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

Earned Release Time Eligibility DOC Policy 350.100

Prepared by Keri-Anne Jetzer, Sentencing Guidelines Commission

Category	ERT %	Effective Dates
Serious Violent Offense	15%	Offense committed 7/1/1990 – 6/30/2003
	10%	Offense committed on or after 6/30/2003
Class A felony sex offense	15%	Offense committed 7/1/1990 – 6/30/2003
	10%	Offense committed on or after 6/30/2003
Moderate or Low Risk	50%	Convicted before July 2, 2010
Excl current or prior: Sex offense, violent offense, Crime Against a Person, ID Theft 1 and 2 (after 6/6/2006), felony DV, ResBurg, M/D/P w/I Meth (and anticip), Delv CS to a Minor (and anticip), GM Stalking, DV VCO incl GM, any new felony committed under comm supv (after 7/22/2007)		
All Others	33.3%	

ERT = 2/3 good conduct time + 1/3 earned time

Good Conduct Time

Good Conduct Time Eligibility: all are eligible except

- LWOP
- serving mandatory/flat time enhancement portion
- comm cust violators sanctioned by DOC on or after 5/2/2012
- CCP return
- CCI termination
- pre-SRA

Good Conduct Time Loss:

- guilty of serious violation
- when serving mandatory enhancement portion good conduct time loss on non-mandatory portion
- commit a violation or being infracted while out to court

Earned Time

Earned Time = persons who participate in approved programs, including work and school, are eligible for earned time for each calendar month as follows:

1. 10% = 1.11 days
2. 15% = 1.76 days
3. 33.3% = 5 days
4. 50% = 10 days

Not eligible if not involved in mandatory programming as determined through the classification process and consistent with Custody Facility Plan. Person will not earn earned time if on a wait list and refuses a program assignment.

For persons transferred to DOC from county jail, the jail administrator will certify to DOC the amount of jail time spent in custody and any earned time not earned. DOC will calculate ERT for time spent in the jail at the rate earned in DOC.