

NO. 83815-1

SUPREME COURT OF THE STATE OF WASHINGTON

In re Personal Restraint Petition of:

ERIC SHERIDAN FLINT,

Petitioner.

SUPPLEMENTAL BRIEF OF RESPONDENT
DEPARTMENT OF CORRECTIONS

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I. STATEMENT OF THE CASE

A. Factual Background.

In April 2002, Eric Flint pleaded guilty to possession of methamphetamine and first degree robbery. He received a standard range sentence of 114 months of confinement, followed by 18 to 36 months of community custody. In August 2007, before the expiration of his maximum prison sentence, he was released to the community on earned early release time.

In 2002, at the time Mr. Flint committed his underlying criminal acts, the law stated that if an offender was released to community custody on earned early release time, and violated a community custody condition or requirement, the Department of Corrections (DOC) was authorized to return the offender to confinement for up to the remainder of his sentence.

Former RCW 9.94A.737(1) stated:

(1) If an offender violates any condition or requirement of community custody, the department [of corrections] may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

Laws of 1999, ch. 196, § 8(1). In 2007, RCW 9.94A.737 was expanded to include the following language:

(2) If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.

Laws of 2007, ch. 483, § 305(2).¹

After transferring to community custody in August 2007, Mr. Flint repeatedly violated the terms of his community custody. Many of these offenses related to his drug problem. His first hearing to address violations was held in April 2008. He was found guilty of using methamphetamine, having contact with a known drug user, rendering criminal assistance to the drug user in evading several warrants against her, and failing to report to DOC. He was sanctioned to 14 days confinement, and required to obtain a chemical dependency treatment evaluation and to comply with the recommended treatment.

A few months later, in July 2008, Mr. Flint signed a stipulated agreement admitting he had violated the terms of his community custody

¹ RCW 9.94A.737 has been amended since 2007 and recodified into two separate statutes: Subsection (1) became RCW 9.94A.633(2) and subsection (2) became RCW 9.94A.714(1).

by failing to report to his community corrections officer. He agreed to the imposition of a curfew.

Four months later, in November 2008, a second hearing was necessary. Mr. Flint was found guilty of failing to comply with urinalysis and blood alcohol monitoring, and failing to report to his community corrections officer. He was sanctioned to 13 days in jail.

On February 6, 2009, Mr. Flint signed a stipulated agreement admitting his use of a controlled substance on January 7, 2009. He was sanctioned to increased reporting and urinalysis, and ordered to attend his drug support group weekly.

On February 12, 2009, a third hearing was held. At the hearing, Mr. Flint pleaded guilty to possession of drug paraphernalia, including a drug pipe and scales, failing to comply with the urinalysis and blood monitoring conditions, failing to attend the required substance users support group, and failing to report to his community corrections officer. Cmty. Custody Hr'g Rpt. at 2 (Feb. 2009) (Attach. A). In considering whether to exercise his discretion to leave Mr. Flint in the community, the hearing officer considered the community corrections officer's report that Mr. Flint is classified as "high violent."² *Id.* at 5. Given his test results

² In discussing Mr. Flint's risk factors, the order notes that Mr. Flint's previous convictions include "3 convictions for Violation of a Protection Order, 2 for UPCS

showing methamphetamine use and his possession of drug paraphernalia, the hearing officer considered that risk to be further elevated at the time of the hearing. *Id.* Mr. Flint was not engaging in drug treatment despite his admitted drug problem. The hearing officer noted that Mr. Flint “recently was given a Stipulated Agreement for using drugs on 1/21/09 and was to report back on 1/28/09 and he never did.” *Id.* at 6. The next time his community corrections officer heard from him, “is when he [was] arrested for having drug paraphernalia in his car on 2/4/09.” *Id.*

The hearing officer concluded: “I find no compelling reasons not to send Mr. Flint back to prison to serve the remaining portion of his sentence. I believe his behavior presents a risk to the safety of the community and this sanction does not interfere with his adjustment in the community.”³ *Id.* The Order does not state whether this sanction was issued pursuant to the hearing officer’s authority under the prior version of RCW 9.94A.737 to return Mr. Flint to full confinement, or pursuant to authority under the amended version of RCW 9.94A.737 to return him to full confinement.

[Unlawful Possession of a Controlled Substance], 2 for Theft, 2 for Obstructing, 2 for Malicious Mischief, 2 for Criminal Trespass and convictions for Possession of Stolen Property, Forgery, Criminal Assistance and Burglary.” Cmty. Custody Hr’g Rpt. at 5.

³ Mr. Flint was returned to full confinement to serve the 647 days of earned early release previously applied to his sentence. The 366 days he had served on community custody were deducted from his confinement. Mr. Flint’s current planned release date is November 13, 2010.

B. Procedural History.

Mr. Flint filed a personal restraint petition in the Court of Appeals, alleging that DOC was without authority to return him to prison. The petition was dismissed by the Acting Chief Judge as frivolous under RAP 16.11. *In re PRP of Flint*, No. 39212-7-II (Oct. 2009).

II. ARGUMENT

A. The Amended Law Does Not Implicate The Ex Post Facto Clause.

This Court has consistently read the ex post facto clauses of the United States Constitution and the Washington State Constitution co-extensively, as a prohibition on the application of ex post facto laws. *E.g.*, *State v. Hennings*, 129 Wn.2d 512, 524-25, 919 P.2d 580 (1996); U.S. Const., art. I, § 10, cl. 1; Wash. Const. art. I, § 23.

The ex post facto clause is sometimes misread as a prohibition on “any legislative change that has any conceivable risk of affecting a prisoner’s punishment.” *Cal. Dep’t of Corr. v. Morales*, 514 U.S. 499, 508, 115 S. Ct. 1597, 131 L. Ed. 2d 588 (1995). However, the U.S. Supreme Court has “never accepted this expansive view of the Ex Post Facto Clause.” *Id.* When a change in the law creates a “risk of affecting a prisoner’s actual term of confinement by making it more difficult for him

to make a persuasive case for early release . . . that fact alone cannot end the matter for ex post facto purposes.” *Id.* at 509.

In determining whether a statutory amendment falls within the ex post facto prohibition, the question is whether the change increases the punishment. *Collins v. Youngblood*, 497 U.S. 37, 41-44, 110 S. Ct. 2715, 111 L. Ed. 2d 30 (1990); *Morales*, 514 U.S. at 506, n.3. In *Collins*, the U.S. Supreme Court considered a change made to a Texas statute. Prior to Collins’ commission of his crime, if a trial court issued an invalid sentence, the judgment and sentence were void, and the defendant was entitled to a new trial. After commission of the crime, the law was changed to permit the appellate court to reform an improper sentence. *Id.* at 39-40. Although the amended law deprived the defendant of the substantial protection of a new trial, the U.S. Supreme Court held that it was not an ex post facto law, because it “[did] not punish as a crime an act previously committed, which was innocent when done; nor make more burdensome the punishment for a crime, after its commission; nor deprive one charged with crime of any defense available according to law at the time when the act was committed.” *Id.* at 52.

In *Morales*, the U.S. Supreme Court reiterated that speculation that an amended law may have increased an individual’s punishment is insufficient to support an ex post facto claim. The law at issue in *Morales*

decreased the opportunity for parole. At the time Morales committed his crime, the law entitled him to an annual parole hearing. After conviction, the law was amended to allow the parole board to decline to provide a parole hearing for up to three years. Since no prisoner could be paroled without a hearing, the Ninth Circuit held that the law effectively increased prisoners' sentences. The Supreme Court reversed, holding that the question of whether a statutory change violates the Clause "must be a matter of 'degree'" rather than a bright line test. *Morales*, 514 U.S. at 509 (quoting *Beazell v. Ohio*, 269 U.S. 167, 171, 46 S. Ct. 68, 70 L. Ed. 216 (1925)). The Court found that Morales was unlikely to be released, even if he were given a parole hearing.⁴ In addition, the amended law provided the parole board with discretion to hold parole hearings annually rather than deferring the hearings. Since the amended law created only a speculative risk of increasing the measure of Morales' punishment, the amended law was not ex post facto legislation. *Morales*, 514 U.S. at 514.

The Washington Supreme Court has also held that legislative acts do not violate the constitution merely by creating a possibility of an increased sentence. As the Court has recognized, it is "well established

⁴ In California, 10% of prisoners were found suitable for parole at their first hearing, and 15% were found suitable at their second and subsequent hearings. *Morales*, 514 U.S. at 510-11. So although *Morales* had some chance of receiving parole under the prior law, it was unlikely.

that the mere risk that an offender could receive a higher sentence under new procedures does not violate the ex post facto clause.” *State v. Pillatos*, 159 Wn.2d 459, 476, 150 P.3d 1130 (2007), citing *Morales*, 514 U.S. at 505. The amended law must alter the punishment that existed under the prior law. *Pillatos*, 159 Wn.2d at 476; see also *In re Forbis*, 150 Wn.2d 91, 74 P.3d 1189 (2003).

Even if the law had not been amended, the hearing officer could have exercised his statutory discretion under the prior law and returned Mr. Flint to full confinement for the remainder of his sentence. As the hearing order reflects, Mr. Flint has a drug problem. Temporarily placing him in more full confinement in response to earlier violations did not inspire him to comply with the terms of community custody. Each of his hearings addressed multiple violations. In the third hearing, the hearing officer noted that shortly after entering a stipulation regarding use of drugs, Mr. Flint violated the terms of his community custody by possessing drug paraphernalia, including a drug pipe and scales, by failing to report to his community corrections officer, and by failing to attend substance abuse treatment. Cmty. Custody Hr’g Rpt. at 6 (Attach. A). Given Mr. Flint’s repeated violations of the terms of community custody, the hearing officer may well have found it appropriate to return Mr. Flint to full confinement for the remainder of his sentence, pursuant to the

authority granted by the prior version of RCW 9.94A.737. The negligible risk of increased punishment the amended law may have created is far too insufficient to support an ex post facto claim.

1. The Court of Appeals' decision in *State v. Madsen* is incorrect.

Mr. Flint's reliance on *State v. Madsen*, 153 Wn. App. 471, 228 P.3d 24 (2009), is misplaced for two reasons. First, the *Madsen* opinion overlooked the U.S. Supreme Court's analysis in *Morales* and *Collins*, and is based on a misreading of *Lindsey v. Washington*, 301 U.S. 397, 57 S. Ct. 797, 81 L. Ed. 1182 (1937) and *Miller v. Florida*, 482 U.S. 423, 107 S. Ct. 2446, 96 L. Ed. 2d 351 (1987). Second, the opinion incorrectly stated that the 2007 amendment mandates a return to prison after the third hearing, and ignores the fact that the amended law retains discretion for the hearing officer to leave the offender in the community, or impose confinement for a lesser period of time.

In *Lindsey*, the U.S. Supreme Court considered the constitutionality of an amendment to a Washington law. At the time the defendants committed grand larceny, Washington law imposed a maximum sentence of 15 years. The court had discretion to set a lower sentence, of no less than six months. *Lindsey*, 301 U.S. at 398. By the time of sentencing, the law was amended to require a mandatory 15-year

sentence. Unlike the law at issue in Mr. Flint's case, the law at issue in *Lindsey* stripped the courts of all discretion to impose a lower sentence. Laws of 1935, ch. 114, § 2. The U.S. Supreme Court held that the amendment violated the ex post facto clause by removing any possibility of a sentence of less than 15 years. *Lindsey*, 301 U.S. at 401.

A similar problem was recognized by the U.S. Supreme Court in *Miller*. At the time the offender committed his crime, the sentencing statute contained a presumptive sentence range for his crime of 3½ to 4½ years. Prior to his sentencing, the law was amended to increase the presumptive range for his crime to 5½ to 7 years. This increase in the punishment violated the ex post facto clause. *Id.* at 433-34.

The *Madsen* opinion misread *Lindsey* and *Miller* as basing the ex post facto analysis on whether the amended law creates a "disadvantage" or deprives the petitioner of all "opportunity" to be freed from confinement. *Madsen*, 153 Wn. App. at 483. This interpretation of the case law directly conflicts with the U.S. Supreme Court's more recent decisions in *Morales* and *Collins*. As the U.S. Supreme Court has explained, although *Lindsey* and *Miller* "suggested that enhancements to the measure of criminal punishment fall within the ex post facto prohibition because they operate to the 'disadvantage' of covered offenders, . . . that language was unnecessary to the results in those cases

and is inconsistent with the framework developed in *Collins v. Youngblood*". *Morales*, 514 U.S. at 506, n.3 (citations omitted). The U.S. Supreme Court emphasized that: "After *Collins*, the focus of the ex post facto inquiry is not on whether a legislative change produces some ambiguous sort of 'disadvantage,' nor . . . on whether an amendment affects a prisoner's 'opportunity to take advantage of provisions for early release,' . . . but on whether any such change alters the definition of criminal conduct or increases the penalty by which a crime is punishable." *Id.*

In this case, the amendment to RCW 9.94A.737 did not alter the definition of the criminal conduct, and did not increase the sanction. Both the past and amended versions of the law allowed return of offenders to full confinement after community custody violations. In fact, the prior version allowed a return to full confinement after the first community custody violation. And, under both the past and amended versions of the statute, the hearing officer had discretion to issue a lesser sanction or even leave the offender in the community. Since the amendment did not increase the penalty, it did not violate the ex post facto clause.

2. An ex post facto claim must be determined by examining the law, not prior administrative practice.

Mr. Flint's contention that he would have been more likely to receive a 60-day sanction, had the prior version of RCW 9.94.737 been applied, is immaterial. Mr. Flint's argument is based not on the law, but on his assumptions regarding the general practice of DOC. This Court has held that prior administrative policy is irrelevant to consideration of an ex post facto claim. *In re Powell*, 117 Wn.2d 175, 814 P.2d 635 (1991). In *Powell*, the Court considered the impact of an amended law on the time served by offenders who received a mandatory life sentence. Under the law in place when the petitioners were sentenced, the parole board had authority to grant parole after the offenders had 1) served 20 years in prison (less good time); and 2) the prison superintendent certified the inmate for parole. The law was amended to require the parole board to begin setting minimum sentences for persons serving life sentences, and to make such minimum sentences reasonably consistent with the Sentence Reform Act. *Id.* at 186. When the prior law was in effect, the prison warden's consistent administrative practice was to certify inmates for parole after 20 years. *Id.* at 192. Under the amended law, the typical period of incarceration was 25 to 27 years. *Id.* at 188. Therefore, the offenders contended the amended law violated the ex post facto clause.

The Court rejected the ex post facto claim, stating: “For a law to be ex post facto, it must detrimentally alter the standard of punishment called for by a prior *law*, not by a prior administrative practice which was not required by that law.” *Id.* at 192. The Court noted that one of the primary goals of the ex post facto clause is to ensure that legislative acts “give fair warning of their effect”. *Id.* Under the prior law, offenders might have expected to serve 20 years in confinement, given the usual administrative practice. However, since the prison superintendent had discretion in deciding whether to certify an inmate for parole, “they could not have been certain that the practice would be followed in their cases.” *Id.* The discretion the prior law afforded the prison superintendant was recognized by the Court as fair warning to offenders that they might not be paroled in 20 years. The Court concluded that “[t]he ‘fair warning’ with which the ex post facto clause is concerned is provided by prior statutes, not prior administrative practice not required by its authorizing legislation.” *Id.*

There is no evidence in the record from which one could determine what sanction was typically received when the prior version of RCW 9.94A.737 was in place.⁵ As the Court held in *Powell*, even if the record

⁵ Both the former law and the law at the time of the hearing gave the hearing officer discretion to return Mr. Flint to prison for the remainder of his term. It would be

contained that information, it would be irrelevant. The proper question is whether the prior law provided fair warning to offenders that they could be returned to prison to serve the remainder of their sentences. Since the amendment to RCW 9.94A.737 did not change the punishment, it does not run afoul of the ex post facto clause.

B. The Statutory Authorization For The Punishment Has Not Retroactively Expired.

Mr. Flint argues that his sanction is void, as the result of a 2009 legislative enactment that became effective five months after the hearing officer's order was issued. Mr. Flint is mistaken.

In 2009, the legislature enacted ESSB 5288. Laws of 2009, ch. 375. Section 13 of the bill added a provision to RCW 9.94A.737, addressing supervision of offenders with a suspended sentence imposed pursuant to RCW 9.92.060, RCW 9.95.204 or RCW 9.95.210. The bill

speculative at best, arguably impossible, and certainly prejudicial to presume how a hearing officer would have exercised discretion under circumstances other than those actually presented. Although the *Madsen* case predicts that a 60-day sanction would have been "probable" under the prior statute, DOC has not made such a concession here. Any such statement is unsupported by the record and would be incorrect. Even if there were such evidence, it would be irrelevant. The hearing officer was bound only by the law. Attempts to use profiles or statistics for the purpose of proving an individual situation would conform have been disapproved. As this Court has stated, a petitioner cannot establish his claim "merely by citing general statistics." *In re Davis*, 152 Wn.2d 647, 754, 101 P.3d 1 (2004) (rejecting claim that plaintiff's death sentence was racially motivated because of assertion minorities are statistically more likely to have the sentence imposed). The risk presented by attempting to use "tendency" evidence to reach a conclusion about what might have happened in a specific situation is reinforced by Evidence Rule 404(b), which forbids admission of past events as proof of conformity in an individual event. See, *State v. Lough*, 125 Wn.2d 847, 853, 889 P.2d 487 (1995). Speculation about the result of a different and hypothetical quasi-adjudicative hearing should not be permitted in this case.

did not impact RCW 9.94A.737(2), the provision at issue in this case, and Mr. Flint makes no attempt in his argument to explain how the amendment could have impacted him. The bill stated that section 13 of the 2009 Act would expire on August 1, 2009. Laws of 2009, ch. 375, § 19. Since the 2009 act had no impact on RCW 9.94A.737(2) or Mr. Flint's supervision, it has no bearing on this case.

Moreover, in 2008, the legislature reaffirmed its commitment to preserving hearing officers' ability to sanction offenders for community custody violations by returning offenders to serve the remainder of the sentence in confinement. Laws of 2008, ch. 231, § 16. The new provision, codified in RCW 9.94A.714, states:

(1) If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing pursuant to RCW 9.94A.737 for any violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's risk of reoffending.

The 2009 bill cited by Mr. Flint does not impact RCW 9.94A.714, either.

ESSB 5288, Laws of 2009, ch. 375.

C. Mr. Flint Was Afforded Proper Notice.

Revocation of community custody or parole “is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.” *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). However, the U.S. Supreme Court has held that revocation of the limited liberty afforded by parole is entitled to minimum due process requirements, including: written notice of the claimed violations of parole; disclosure of the evidence against the parolee; the opportunity to be heard and present witnesses and evidence; the right to confront witnesses; a neutral hearing body, which is not required to contain judicial officers or attorneys; and a written statement by the fact finder, stating the evidence relied on and the reason for revoking parole.

The Washington State Constitution provides the same scope of procedural due process as the federal constitution. *State v. Crawford*, 159 Wn.2d 86, 93, 147 P.3d 1288 (2006); Wash. Const. art. I, § 3. This Court recently held that notice of hearing “must allege the facts and legal elements” necessary to show the offender violated the terms of community custody. *In re Blackburn*, 168 Wn.2d 881, 887, 232 P.3d 1091 (2010). The notice provided to Mr. Flint provided him with the requisite procedural due process, as discussed in *Morrissey* and *Blackburn*. He had

full knowledge of the allegations and opportunity to prepare a defense, but chose to plead guilty to four of the allegations.

Mr. Flint does not contend that he was not provided notice of his offenses or an opportunity to be heard. Rather, he asks the Court to impose notice proceedings that exceed the requirements set forth in *Morrissey*. He contends he is entitled not only to notice of the violations, but also to notice of the factors that may be considered by the hearing officer in sentencing him to return to full confinement, pursuant to the amended RCW 9.94A.737.

There is no statutory requirement that offenders be provided notice of the language of the sentencing statute. As this Court recognized in *Crawford*, the legislature has authority to set sentencing procedures, and the Court “will not mandate greater procedural protections than those required by statute unless those requirements violate a constitutional guaranty.” *Crawford*, 159 Wn.2d at 94.

If the Court finds that Mr. Flint should have been provided notice of the hearing officer’s discretion to impose a lesser sanction or allow Mr. Flint to remain in the community, the appropriate remedy is to require the hearing officer to revisit the sanction, after providing Mr. Flint notice and an opportunity to present testimony and facts to support a request for a lesser sanction.

D. Offenders Who Are Sanctioned And Returned To Prison Are Not Entitled To Earn Early Release Time.

RCW 9.94A.729(1)⁶ states that a criminal sentence may be reduced by earned release time in accordance with procedures developed by the correctional agency confining the offender. While serving his sentence, Mr. Flint earned early release time pursuant to the procedures adopted by DOC. It was this early release time that allowed DOC to release Mr. Flint to community custody prior to the completion of his prison sentence.

The sanction imposed on Mr. Flint for his violation of the terms of community custody was a loss of his early release. Both the prior and the amended RCW 9.94A.737 authorized DOC to return Mr. Flint “to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence”. The sanction imposed by the hearing officer does not extend Mr. Flint’s underlying sentence. And, Mr. Flint was given credit for the time he served on community custody. But he is not statutorily entitled to earn early release time while being sanctioned to a loss of his early release time.

Consistent with the law, DOC’s Policy 350.100 states that offenders sanctioned to a termination of early release are not entitled to

⁶ Formerly RCW 9.94A.728 (2002).

earn early release credits: “Offenders who are serving time as a result of lost earned time or lost good conduct time may not earn good conduct time.” Attach. B at 2 (Part I.B.2). Mr. Flint points to language on page 11 of the policy, and claims that DOC created an entitlement to earn early release time while serving sanctions for violating community custody terms. Attach. B. The language at page 11 of the policy applies solely to offenders who are in jail due to sanctions of up to 60 days per violation under RCW 9.94A.633(1)(a),⁷ not sanctions that constitute a termination of early release.

Nothing in statute or DOC policy allows an offender to earn early release credits during a confinement term that is comprised of lost early release credits. To do so would undermine the legislative decision to impose consequences for offenders who violate sentence conditions while on community custody.

⁷ Formerly RCW 9.94A.737(2)(a)-(d) (2002).

III. CONCLUSION

The State respectfully requests that the Court of Appeals decision be confirmed.

RESPECTFULLY SUBMITTED this 27th day of July, 2010.

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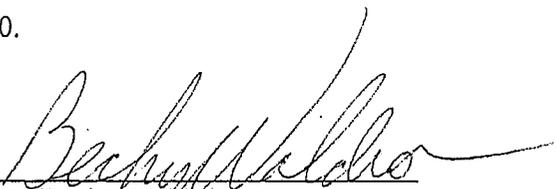
CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of Supplemental Brief of Respondent Department of Corrections to be served on the following via e-mail:

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DATED this 27th day of July, 2010.


Becky Waldron
Legal Assistant

ATTACHMENT A



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

COMMUNITY CUSTODY HEARING REPORT

OFFENDER NAME: FLINT, Eric

DATE: 2/26/09

CRIME: CT I Robbery 1st Degree

DOC NUMBER: 733044

CT II Possession of Controlled

Substance: (Methamphetamine)

COUNTY OF CONVICTION: Kitsap

CAUSE #: AF 021001651

A Community Custody Hearing was held on 2/12/09 at Kitsap County Jail in Port Orchard, Washington, regarding the following alleged violations of the conditions of supervision / sentence for Mr. Eric Flint. The hearing was conducted by Hearing Officer Ernest Torok and parties present for the hearing were: Community Corrections Officer Karla Pijaszek and Mr. Eric Flint.

Upon convening the hearing, I determined that Mr. Flint had received proper service of the Notice of Allegations, Hearing, Rights, and Waiver. I also found that Mr. Flint had previously been provided with copies of all of the documentary evidence to be used against him during the hearing.

I provided the offender with notice of the right to appeal, the address for filing the appeal, and an optional form to be used to file an appeal and Mr. Flint acknowledged that he understood his hearing and appeal rights.

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DOC 460.130

Preliminary Matters:

None

The Department of Corrections alleged that the following **violations** were committed:

1. Failing to abide by previous sanction by failing to report to the Department of Corrections on 1/28/09 as directed in Kitsap County, WA.
2. Failing to abide by previous sanction by failing to be available for urinalysis testing since 1/21/09.
3. Failing to abide by previous sanction by failing to submit verification of sober support group attendance since 1/21/09 in Kitsap County, WA
4. Failing to obey all laws by being in Possession of drug paraphernalia on or about 2/4/09.
5. Failing to obey all laws by driving without a valid driver's license on or about 2/4/09 in Kitsap County, WA

The offender entered the following **pleas** to each violation:

1. Guilty
2. Guilty
3. Guilty
4. Guilty
5. Not Guilty

The hearing officer made the following **findings** as to each violation:

1. Guilty
2. Guilty
3. Guilty
4. Guilty
5. Not Guilty

Evidence Relied Upon:

CCO Pijaszek reported that on 4/19/02, Mr. Flint was sentenced in Kitsap County Superior Court on Cause AF 0211001651 to 18 to 36 months of Community Custody. He was ordered to report

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to The Department of Corrections (DOC) as directed, comply with all DOC imposed conditions, obey all laws and not to possession or consume unlawful drugs or drug paraphernalia.

Allegations One, Two and Three

On 9/10/07, Mr. Flint signed the DOC Standard Conditions, Requirement and Instruction form and agreed to abide by his conditions of Community Custody. On 1/21/07, Mr. Flint signed a Stipulated Agreement and agreed to the following sanctions for four consecutive weeks: Report each Wednesday to his assigned CCO beginning on 1/28/09, submit to increased urinalysis testing and attend 3 sober support groups (AA/NA) per week.

CCO Pijaszek reported that on 1/28/09, she talked to Britney McNight and she said she was with B & M Landscaping and Mr. Flint was working for her. She reported that Mr. Flint was working in Seabeck and may not return from the jobsite in time make his reporting obligation. CCO Pijaszek told Ms. McNight to have Mr. Flint call her if he returned to the office before 5 PM, and if not he was to call her in the morning.

Mr. Flint did not report on 1/28/09, as required, did not call on 1/29/09 as instructed through Ms. McNight. CCO Pijaszek called Ms. McNight on 1/29/09, looking for Mr. Flint, and left a voice message for her to call back. Ms. McNight never called CCO Pijaszek back. CCO Pijaszek then called Mr. Flint's cell phone and it was not working.

CCO Pijaszek asked CCO Zapp to look for Mr. Flint and he could not find him. CCO Zapp checked Mr. Flint's last known location, which was a storage unit he had reported to be living in and could not find him. CCO Zapp went Poulsbo Mini Storage Unit #3 on the night of 1/29/09 and then again on the morning of 1/30/09 and could not find him. CCO Pijaszek then requested a Secretary's Warrant for Mr. Flint's arrest on 1/30/09.

CCO Pijaszek summarized violations one through three by stating, Mr. Flint failed to report since 1/21/09, he failed to make himself available for UA monitoring, he failed to submit verification of attending 3 sober support groups for the weeks ending 1/28/09 and 2/4/09 as agreed in the Stipulated Agreement.

At the Hearing, Mr. Flint plead guilty to allegations one, two and three. He said that he was told by his boss that he was cleared to work on the 28th and the message he got, did not say anything about calling on the 29th. Mr. Flint said his next report day was on 2/4/09 and he got arrested on the morning of 2/4/09 and therefore could not report after that. Mr. Flint said he also attended the sober support groups but did not have proof of attending and that was why he plead guilty to

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allegations three. He said he also knew that he was required to report on the 28th and should have followed up and that is why he plead guilty to allegations one and two.

I found Mr. Flint guilty of allegations one, two and three based on his plea and did not find his explanations very believable or creditable. I relied more on the facts presented by CCO Pijaszek in that Mr. Flint did not report since 1/21/09 and then was arrested on 2/4/09.

Allegations Four and Five

CCO Pijaszek reported that on 2/4/09, Mr. Flint was arrested by Officer Justin Gillen, who was with the Paulsbo Police Department. Officer Gillen noticed that Mr. Flint was driving a red car in the City of Paulsbo and the registration in the computer reported it as a white car. Officer Gillen stopped the car and the driver was Mr. Flint. He did not have a driver's license on his person and said the car had been recently painted red. Investigation revealed that Mr. Flint also had an outstanding DOC warrant. Mr. Flint was arrested and the car was searched. Officer Gillen discovered a multicolored pipe lying between the driver's seat and the door. With Officer Gillen experience as a K-9 handler, he identified the pipe to be drug paraphernalia and it had an odor of burnt marijuana.

Officer Gillen also discovered a blue colored draw string bag which contained a portable scale, a bundle of clear plastic bags and red colored cut straw. Officer Gillen also believed these items to be drug paraphernalia based on his experience. Officer Gillen obtained "Aico" (a certified narcotic detection dog) and proceeded with a narcotic odor search. The dog confirmed the odor of narcotics on the drug paraphernalia. While transporting Mr. Flint to jail he told Officer Gillen that, "it is hard not to go out and buy a pound of dope and flood the city with it." CCO Pijaszek introduced as evidence the police report written by Officer Gillen. She also read the police report aloud at this hearing. In addition, CCO Pijaszek testified that she spoke with Officer Gillen and confirmed the information in the police report.

At the Hearing, Mr. Flint plead guilty to allegation four and said he had the pipe to give to a friend as a replacement to one that he had broken. However, he said he did not know that the scale and the bundle of clear plastic bags were in the car. Mr. Flint also said he did not have his driver's license on him when he was stopped by Officer Gillen, but he did in fact have a valid driver's license.

I found Mr. Flint guilty of allegation four based on Mr. Flint's plea and the evidence submitted by CCO Pijaszek.

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I found Mr. Flint **not guilty of allegation five** because Mr. Flint said he had a valid driver's license and produced a valid Washington State ID when he was stopped. And there were no evidence submitted to prove that he did not have a valid issued license. He was not charge with driving without a valid license by the arresting officer and there were no evidence introduced to show that Mr. Flint's license had been suspended.

Under RCW 46.20.005, Driving without a license, this section does not apply if when the person is stopped, they have an expired license or other identifying documentation, etc. Because of these circumstances, the violation becomes a traffic infraction and not a misdemeanor under RCW 46.20.015 (a). Therefore, I found Mr. Flint not guilty because he committed a traffic infraction and did not commit a misdemeanor. Therefore, it had not been proven that Mr. Flint failed to obey all laws.

Disposition:

The CCO provided the following information regarding the offender's adjustment on supervision:

CCO Pijaszek reported that Mr. Flint is classified as High Violent. His risk factors include attitude/behavior and community/employment. He is currently being supervised for Robbery 1st Degree and Possession of Meth. Mr. Flint previous convictions include 3 convictions for Violation of a Protection Order, 2 for UPCS, 2 for Theft, 2 for Obstructing, 2 for Malicious Mischief, 2 for Criminal Trespass and convictions for Possession of Stolen Property, Forgery, Criminal Assistance and Burglary. He also has a pending infraction of Improper Use of License Plates out of Tacoma Municipal Court with a hearing scheduled 3/9/09.

Mr. Flint adjustment to supervision is guarded. Over the last year, Mr. Flint has appeared at 3 OAA Hearings and received sanctions at two. He also signed two Stipulated Agreements. Mr. Flint completed a Chemical Dependency evaluation on 6/4/08 with the recommendation of no treatment at this time. However, given his recent U/A for meth and having drug paraphernalia in his car the risk factors are elevated at this time.

The offender provided the following information regarding their adjustment on supervision:

Mr. Flint reported that it has been up and down. He said he has a drug problem and needs treatment. He said he has been out about a year and a half. He said he got a job with the City of Lynnwood, WA and lost the job in October of 2008. He said he was working at the waste water treatment plant making \$24.00. He was fired when he got a DOC violation and they let him go. Mr. Flint said he got the training while he was in prison and the City of Lynnwood gave

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him a brake and hired him. Mr. Flint said he was homeless and living in a storage unit. He now has an offer from friends, with a place to live and an appointment for a job interview at the Family Pancake House in Bremerton, as a cook. Mr. Flint said he lost his car when he was arrested. He has now gotten it back and it cost him \$500.00 in fees. He said if he were released, he could make it to his job interview and get started back into treatment, if given a chance.

The disposition recommendation of the CCO:

CCO Pijaszek recommended 30 days confinement, obtain an appointment for a Chemical Dependency evaluation within 7 days of release and follow all treatment recommendations. Enroll in MRT Classes with 7 days of release, report to CCO within 1 business day of release and follow all facility rules.

The disposition recommendation of the offender:

Mr. Flint said he would like credit for time served, sanctioned to daily reporting and given an opportunity to get back into treatment. He said he would be happy to take MRT and any other programming recommended.

Hearing Officer disposition, decision, and reasons:

The reason for this sanction is because this is Mr. Flint's third full hearing, he is presently unemployed, lost his job with the City of Lynnwood for DOC violations, and has been somewhat homeless by living in a storage unit. In addition, he has not gotten himself into drug treatment after admitting he has a drug problem.

Mr. Flint was recently was given a Stipulated Agreement for using drugs on 1/21/09 and was to report back on 1/28/09 and he never did. Then the next time his CCO hears from him is when he is arrested for having drug paraphernalia in his car on 2/4/09. I find no compelling reasons not to send Mr. Flint back to prison to serve the remaining portion of his sentence. I believe his behavior presents a risk to the safety of the community and this sanction does not interfere with his adjustment in the community. Therefore, I have imposed the following sanction:

On Cause AF 021001651 return to total confinement to serve the remaining portion of your sentence with credit for time served since 2/4/09. Your sentence and release date shall be recalculated and determined by DOC Records Staff at WCC.

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Ernest Torok

Ernest Torok
HEARING OFFICER SIGNATURE

DATE 2/26/09

ET:d

Distribution: Court Prosecutor Offender County Clerk
 Central File Field File Hearing File
 Hearings Program Manager
 Hearings Officer 2
 ESRB for CCM only

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ATTACHMENT B



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POLICY

TITLE

EARNED RELEASE TIME

REVIEW/REVISION HISTORY:

Effective: 1/4/82 DOC 280.100
 Revised: 5/1/83 DOC 350.100
 Revised: 3/1/86
 Revised: 8/15/90
 Revised: 7/1/96
 Revised: 10/30/96
 Revised: 12/1/98
 Revised: 12/20/00
 Revised: 3/3/05
 Revised: 8/28/06
 Revised: 3/10/08 AB 08-004
 Revised: 9/24/08

SUMMARY OF REVISION/REVIEW:

Several changes. Read carefully!

APPROVED:

Signature on File

ELDON VAIL, Secretary
 Department of Corrections

8/26/08

 Date Signed



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REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 9.92.151; RCW 9.94A.030; RCW 9.94A.505; RCW 9.94A.602; RCW 9.94A.728; RCW 9.95; RCW 69.50; RCW 69.52; RCW 72.09.130; WAC 137-25-030; ACA 4-4480; DOC 320.150 Disciplinary Sanctions; DOC 320.400 Risk Assessment Process

POLICY:

- I. The Department will award Earned Release Time (ERT), which includes good conduct time and earned time credits, to offenders committed to Department facilities within the guidelines established by law.
- II. For an offender convicted of a serious violent offense, or a Class A felony sex offense, committed on or after July 1, 1990, and before July 1, 2003, the ERT may not exceed 15 percent of the sentence.
- III. For offenders convicted of a serious violent offense, or a Class A felony sex offense, committed on or after July 1, 2003, the ERT may not exceed 10 percent of the sentence.

DIRECTIVE:

- I. Good Conduct Time
 - A. All offenders will be eligible for good conduct time, except:
 1. Offenders sentenced to death or Life Without Parole, and
 2. Community Custody Board (CCB) offenders serving the mandatory enhancement portion of their sentences.
 - B. Good conduct time will be applicable to all Class A, B, and C felonies, except that:
 1. Indeterminate offenders cannot earn good conduct time if their minimum term has expired and they have not been paroled or transferred to a consecutive sentence.
 - a. Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.
 2. Offenders who are serving time as a result of lost earned time or lost good conduct time may not earn good conduct time.



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- C. Offenders may fail to earn good conduct time if found guilty of serious infractions per WAC 137-25-030 and sanctioned per DOC 320.150 Disciplinary Sanctions.
- D. A sentence reduction based on good conduct time will be established for each offender and computed on a pro rata basis for every 30 day period served, as allowed by crime category.
- E. The following offenders may lose their uncertified or un-validated good conduct time if found guilty of a serious infraction:
 1. Indeterminate offenders whose time has not been adopted by the Indeterminate Sentence Review Board (ISRB), and
 2. Determinate offenders serving time as a result of not earning earned time or having lost good conduct time.
- F. Good conduct time lost as a result of disciplinary action for a serious infraction(s) will not be certified by the Superintendent/Community Corrections Supervisor (CCS). This includes available good conduct time for offenders who are serving time as a result of lost good conduct time. The amount of time lost will be determined by the Disciplinary Hearing Officer/Committee and subject to Superintendent/CCS approval at the time of validation or certification. Offenders found guilty of infraction 557 or 810 will lose available earned release credits and privileges as outlined by DOC 320.150 Disciplinary Sanctions. Offenders found guilty of an infraction 813 related to employment or programming while in Work Release will also lose available earned release credits and privileges.
- G. Offenders serving the mandatory minimum portion of their sentence are subject to a loss of future good conduct time available during the non-mandatory portion of their sentence. Lost good conduct time will be applied to the remainder of the sentence after the mandatory period is served.
- H. Offenders may lose good conduct time if infringed while out to court.
- I. An offender who has transferred from one sentence within a cause number to the next sentence, or from one cause number to the next cause number, cannot lose ERT associated with the previous sentence or cause.
- J. When all of an indeterminate offender's available good conduct time has been denied due to infractions, the Superintendent/CCS may request, via the Headquarters Community Screening Committee (HCSC), that the ISRB schedule a disciplinary hearing to address the offender's time structure.



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- K. When an offender paroled from an indeterminate sentence to a consecutive determinate sentence commits an infraction, the Counselor/Community Corrections Officer (CCO) will notify the ISRB via email or hard copy, describing the behavior and recommended action. The report will note this behavior as a violation.

II. Earned Time

- A. [4-4480] Offenders who participate in approved programs, including work and school, are eligible for earned time for each calendar month as follows:
1. Earned Time eligible under 10 percent rule 1.11 days
 2. Earned Time eligible under 15 percent rule 1.76 days
 3. Earned Time eligible under 33 percent rule 5.00 days
 4. Earned Time eligible under 50 percent rule 10.00 days
- B. Reception Diagnostic Center Records staff at Washington Corrections Center (WCC-RDC) or Washington Corrections Center for Women (WCCW-RDC) will initiate DOC 12-025 50% Earned Time Review. If the risk assessment is completed by staff at another facility, a new DOC 12-025 50% Earned Time Review will be completed when the risk level is determined.
- C. The Counselor/CCO and Records staff will follow the Process Steps for 50% Earned Time Review (Attachment 3) and Offender Notification of 50% Earned Time Eligibility (Attachment 2).
- D. When a Counselor/CCO completes a risk reassessment that changes an offender's 50% earned time eligibility from eligible to ineligible, s/he will follow 50% Earned Time Eligibility - Modified (Attachment 1).
1. An offender who disagrees with the risk assessment results has the right to appeal to the Superintendent of the facility where the decision was made within 48 hours of notification per DOC 320.400 Risk Assessment Process.
- E. Effective July 1, 2003, the ERT may not exceed 50 percent of the sentence for offenders who are classified as Moderate Risk or Low Risk, and are not convicted of or have a prior:
1. Sex offense,
 2. Violent offense,

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3. Crime against a person, including Identity Theft 1st and 2nd committed on or after June 7, 2006,
 4. Felony domestic violence,
 5. Residential burglary,
 6. Violation of, or attempt, solicitation, or conspiracy to violate, RCW 69.50.401 prohibiting manufacture or delivery or possession with intent to deliver methamphetamine,
 7. Violation of, or attempt, solicitation, or conspiracy to violate, RCW 69.50.406 prohibiting delivery of a controlled substance to a minor,
 8. Gross misdemeanor stalking,
 9. Domestic violence court order violation, including gross misdemeanors, or
 10. Any felony committed under community supervision.
- F. Offenders are not eligible for earned time if:
1. They are not involved in mandatory programming as determined through the classification process and consistent with their Custody Facility Plan. This includes refusing a mandatory work/school/program assignment or being terminated from a mandatory work/school/program for documented negative or substandard performance.
 - a. Offenders found guilty of infraction 557 or 810 will lose available earned release credits and privileges as outlined by DOC 320.150 Disciplinary Sanctions. Offenders found guilty of an infraction 813 related to employment or programming while in Work Release will also lose available earned release credits and privileges.
 - b. Offenders previously determined qualified to receive 50% earned time will participate in programming or activities targeted in the Custody Facility Plan. The offender will not be penalized if programs and activities not available.
 - c. If found guilty of infraction 557 or 810, the calculation of earned time will revert to being calculated based on the current offense. The Disciplinary Hearing Officer will notify the Records Manager of all guilty findings for 557 and 810 infractions. The Hearing Officer will notify Records staff at the sending facility if the infraction is incurred in Work Release or a facility transfers the offender prior to

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completion of the hearing. Records staff at the sending facility will revise DOC 02-329 50% Earned Time Eligibility Change Notice.

2. They refuse any transfer, excluding Work Release. Earned time, at the appropriate earned time percentage as allowed by crime category, will not be granted for each calendar month the offender refuses assignment.
 3. They serve 20 days or more in one calendar month in Administrative Segregation/Intensive Management status or disciplinary segregation. Loss of ERT will be calculated as allowed per crime category. The offender is not eligible to begin earning earned time until the Superintendent approves placement in general population. Offenders who are approved for transfer to general population and are scheduled for release to the community within 60 days will not lose earned time unless found guilty of infraction 557 or 810, or of an infraction 813 related to employment or programming while in Work Release. For other than negative behavior, offenders on Administrative Segregation/Intensive Management status will continue to earn earned time at the rate allowed by crime category.
 4. They are serving the mandatory minimum portion of their sentence, except indeterminate offenders sentenced for crimes committed before July 1, 1984. The offender's electronic file will be updated to record the behavior.
 5. Their Counselor/CCO receives new information or completes a risk reassessment that changes the offender's risk management level to High Risk Violent or High Risk Non-Violent. The Counselor/CCO will follow the steps in 50% Earned Time Eligibility - Modified (Attachment 1).
- G. Earned time will be reviewed and recorded on the OMNI Earned Time screen at the regularly scheduled review or during any month earned time is not earned. The Counselor/CCO will provide documentation to the Correctional Records Supervisor (CRS) to update the OMNI Earned Time screen prior to the scheduled review and prior to transfer to another facility. Counselors and Work Release CCOs will request an OMNI Earned Release Credits Report. At a classification hearing where earned time will be addressed, the offender will receive a written record of his/her earned time at least 24 hours prior to the scheduled classification review if earned time is not earned. Action taken by the committee is final and cannot be appealed.
- H. Earned time not earned as a result of infraction 557 or 810, or of an infraction 813 related to employment or programming while in Work Release, cannot be restored.

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I. Offenders will receive a written record of all earned time denials.

III. County Jail Earned Time

A. The Department does not calculate the ERT for the county jails. For offenders transferred from a county jail to the Department, the jail administrator will certify to the Department the amount of time spent in custody at the jail and the amount of ERT.

1. If no certification has been provided, the CRS/designee will send a letter to the jail administrator requesting s/he provide a jail certification.
 - a. If the jail administrator certifies jail time credits to consecutive sentences for the same time period and the Judgment and Sentence does not address jail time credits, the CRS will correct the jail certification by deducting any duplicate jail time credits and jail good time credits from the jail certification totals and applying the remaining credits.
 - b. In the case of a Department sanction, if the jail administrator certifies jail credits to a consecutive sentence which includes credits for time served on the Department sanction and the Judgment and Sentence does not address jail time credits, the CRS will deduct the sanction days served from the jail credits and the good time for sanction time served and apply the remaining credits to the consecutive sentence.
 - c. The CRS will send a letter to the jail administrator requesting an amended jail certification. However, the CRS does not need to wait for the amended jail certification to apply the proper credits.
2. The CRS will send the offender DOC 09-261 Court of Appeals Decision – Jail Time Credits, informing him/her of the Department's authority to correct the jail certification when there is a manifest error of law in the jail's certification.
3. If the court orders jail time credits for the same time period on consecutive sentences with the same intake date to Prison, the Judgment and Sentence must be followed and the jail time credits will be applied accordingly.
4. If the court orders jail time credits for the same time period on consecutive sentences with different intake dates to Prison, added causes, the CRS will apply the credits for the Judgment and Sentence and then apply

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Wickert time (i.e., out time applied to a period of confinement when the offender is required to serve a consecutive period of confinement starting before the current confinement is complete) for that same time period.

IV. Re-sentenced Credit Time Served

- A. Offenders who are re-sentenced are entitled to receive credit for the original jail time, original jail good time, Department time served, and earned time on the Department time served. All time the offender served for the conviction offense, as well as the ERT at the appropriate earned time percentage, will be applied. Any conduct time loss due to infractions, or earned time not earned during the time served on the original sentence, must be deducted from the Department earned time.

V. Persistent Prison Misbehavior

- A. An offender serving a sentence for an offense committed on or after August 1, 1995, who has lost all of his/her good conduct time credits for the current incarceration may have future and/or un-validated earned time credits taken away as part of a disciplinary sanction for Persistent Prison Misbehavior per DOC 320.150 Disciplinary Sanctions.

VI. Release Date

- A. A determinate offender held beyond his/her Earned Release Date (ERD) may have available ERT taken if found guilty of an infraction.
- B. An offender with an established release date who receives a Category A infraction after a community release plan has been approved will have the release date suspended until adjudication of the infraction and all time loss and sanctions are completed.
- C. The CRS will be immediately notified by telephone if the release date changes, when the offender is denied earned time or loses good conduct time and/or the ERD is within 120 days to release.

VII. Recording/Validation Certification

- A. The CRS will update the earned time on the OMNI Earned Time screen. Entries on OMNI Earned Time begin with the time start and subsequent entries will be from the first of each month. Entries will be made at:
 1. Annual review,
 2. The request of the ISRB,



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3. The end of the longest concurrent sentence,
 4. Transfer from one cause to a consecutive cause,
 5. Transfer to another facility,
 6. The time of escape and at apprehension, and
 7. Release.
- B. ERT and good conduct time will be reviewed and validated by the Superintendent/CCS at intervals not to exceed one year. At the time of his/her yearly review, each offender will receive a written record of the ERT s/he is eligible to earn.
- C. ERT will be certified by the Superintendent/CCS or designee.
1. For indeterminate offenders, certification is final when adopted by the ISRB at the time of parole or transfer to a consecutive determinate sentence.
 2. If an offender is found guilty of an infraction after certification on the sentence s/he is currently serving, but prior to release, the certification may be rescinded.
- D. Prior to adoption by the ISRB for indeterminate sentences or certification by the Superintendent/CCS for determinate sentences, the projected ERD should be used for classification purposes when considering minimum facility placement, Work Release, and pre-parole/community release planning.

VIII. Restoration of Good Conduct Time

- A. At a regularly scheduled review, offenders may request restoration of good conduct time from the Superintendent/CCS where the offender is housed.
- B. The unit team may recommend approval provided:
1. The good conduct time on a determinate sentence has not been certified,
 2. The offender has been free of serious infractions for at least one year from the date of the last serious infraction,
 3. The offender is not within 6 months of his/her ERD and the restoration will not put the offender less than 120 days to release,
 4. That during the current incarceration the offender has not committed infraction 501, 502, 507, 511, 521, 550, 601, 602, 603, 604, 611, 612, 613, 635, 636, 637, 650, or 651,

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5. That during the current incarceration the offender has not committed infraction 557 or 810, or an infraction 813 related to employment or programming while in Work Release, and
 6. That during the current incarceration the offender has not committed infraction 857 before November 20, 2006.
- C. When making this decision, the Superintendent/CCS will consider:
1. Length of positive program participation,
 2. Period of infraction free behavior,
 3. Nature of infractions,
 4. Overall behavior during the commitment period, and
 5. Unit team recommendation.
- D. A copy of the Custody Facility Plan and any associated documents (e.g., infraction reports), along with a criminal history summary, will be sent to the Superintendent/CCS. S/he will complete DOC 21-730 Restoration of Good Conduct Time to recommend or deny restoration of the good conduct time.
- E. Designated staff will document restoration of good conduct time in the infraction narrative on OMNI Infraction Summary screen.
- F. The CRS will be immediately notified by telephone when the release date is adjusted upon restoration of good conduct time.
- IX. Community Custody
- A. The Superintendent/CCS will certify the ERT and the transfer of eligible offenders to community custody.
1. Offenders convicted of the following offenses may have their sentences reduced by ERT:
 - a. A sex crime,
 - b. An offense statutorily categorized as a serious violent offense,
 - c. Assault 2nd,
 - d. Vehicular Homicide,
 - e. Vehicular Assault,
 - f. Assault of a Child 2nd,
 - g. Any crime against a person where it is determined, per RCW 9.94A.602, that the offender or an accomplice was armed with a deadly weapon at the time of commission, or
 - h. Any felony offenses under RCW 69.50 or RCW 69.52.



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
PRISON/WORK RELEASE
OFFENDER/SPANISH MANUALS

REVISION DATE
9/24/08

PAGE NUMBER
11 of 11

NUMBER
DOC 350.100

POLICY

TITLE

EARNED RELEASE TIME

2. Community Custody Violators confined in a Department facility for sanction time are eligible for ERT credits at the rate of 33 percent.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

50% Earned Time Eligibility - Modified (Attachment 1)
Offender Notification of 50% Earned Time Eligibility (Attachment 2)
Process Steps for 50% Earned Time Review (Attachment 3)

DOC FORMS:

DOC 02-329 50% Earned Time Eligibility Change Notice
DOC 05-066 Request for Disclosure of Records
DOC 05-794 Classification Hearing Notice/Appearance Waiver
DOC 09-261 Court of Appeals Decision – Jail Time Credits
DOC 12-025 50% Earned Time Review
DOC 21-730 Restoration of Good Conduct Time

OFFICE RECEPTIONIST, CLERK

To: Waldron, Becky (ATG); david@washapp.org; lila@washapp.org
Cc: Egeler, Anne (ATG)
Subject: RE: In re Flint, No. 83815-1 - Supplemental Brief of DOC

Rec'd 7/27/2010

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Waldron, Becky (ATG) [mailto:BeckyW@ATG.WA.GOV]
Sent: Tuesday, July 27, 2010 3:50 PM
To: OFFICE RECEPTIONIST, CLERK; david@washapp.org; lila@washapp.org
Cc: Egeler, Anne (ATG)
Subject: In re Flint, No. 83815-1 - Supplemental Brief of DOC

OBO Anne Egeler: Attached is our Supplement Brief of Respondent Department of Corrections in the above-entitled action.

<<Supplemental Brief of DOC.pdf>>

Becky Waldron

SGO - 40100

360-753-4111

"Save Me to a Folder So a Tree Can Grow Older"