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SUPREME COURT NO. 91920-8

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re the Personal Restraint Petition of:

CLARK L. STUHR,

Petitioner

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SUPPLEMENTAL BRIEF OF PETITIONER

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 ORIGINAL

TABLE OF CONTENTS

	Page	
A. <u>ISSUES PRESENTED IN SUPPLEMENTAL BRIEF</u> .....	1	
B. <u>SUPPLEMENTAL STATEMENT OF THE CASE</u> .....	1	
C. <u>SUPPLEMENTAL ARGUMENT</u> .....	2	
DOC REGULATIONS AND POLICIES ALLOWING FOR REVOCATION OF FUTURE GOOD CONDUCT TIME IRRECONCILABLY CONFLICT WITH RCW 9.94A.729(1)(a). 2		
1. <u>Under RCW 9.94A.729(1)(a), future good conduct time cannot be taken away because it does not exist until it is actually earned.</u> ....		3
2. <u>Out-of-state cases and policy considerations further demonstrate future good conduct time cannot be revoked.</u> ....		10
3. <u>If DOC is correct that it can revoke future good conduct time, then inmates have a liberty interest in that good conduct time and are entitled to due process of law.</u> .....		16
D. <u>CONCLUSION</u> .....	20	

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>Amunrud v. Bd. of Appeals</u> 158 Wn.2d 208, 143 P.3d 571 (2006).....	17
<u>Bostain v. Food Express, Inc.</u> 159 Wn.2d 700, 153 P.3d 846 (2007).....	7
<u>Cockle v. Dep't of Labor &amp; Indus.</u> 142 Wn.2d 801, 16 P.3d 583 (2001).....	7
<u>In re Pers. Restraint of Cashaw</u> 68 Wn. App. 112, 839 P.2d 332 (1992) <u>aff'd on other grounds, Cashaw</u> , 123 Wn.2d 138, 866 P.2d 8 (1994). ....	9
<u>In re Pers. Restraint of Erickson</u> 146 Wn. App. 576, 191 P.3d 917 (2008).....	8
<u>In re Pers. Restraint of Fogle</u> 128 Wn.2d 56, 904 P.2d 722 (1995).....	8
<u>In re Pers. Restraint of McCarthy</u> 161 Wn.2d 234, 164 P.3d 1283 (2007).....	17
<u>In re Pers. Restraint of Piercy</u> 101 Wn.2d 490, 681 P.2d 223 (1984).....	10
<u>In re Pers. Restraint of Pullman</u> 167 Wn.2d 205, 218 P.3d 913 (2009).....	3, 10, 17, 18, 19
<u>In re Pers. Restraint of Reifschneider</u> 130 Wn. App. 498, 123 P.3d 496 (2005).....	3, 8
<u>In re Pers. Restraint of Talley</u> 172 Wn.2d 642, 260 P.3d 868 (2011).....	4
<u>Monohan v. Burdman</u> 84 Wn.2d 922, 530 P.2d 334 (1975).....	18, 19

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>Monroe v. Soliz</u> 132 Wn.2d 414, 939 P.2d 205 (1997) .....	16
<u>State v. Donery</u> 131 Wn. App. 667, 128 P.3d 1262 (2006) .....	15
<u>State v. Gray</u> 174 Wn.2d 920, 280 P.3d 1110 (2012) .....	3, 4
<u>State v. Roberts</u> 117 Wn.2d 576, 817 P.2d 855 (1991) .....	10
<u>State v. Roden</u> 179 Wn.2d 893, 321 P.3d 1183 (2014) .....	6
<u>State v. Roggenkamp</u> 153 Wn.2d 614, 106 P.3d 196 (2005) .....	15
<u>Swinomish Indian Tribal Cmty. v. Dep't of Ecology</u> 178 Wn.2d 571, 311 P.3d 6 (2013) .....	7

FEDERAL CASES

<u>Sandin v. Conner</u> 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995) .....	19, 20
<u>Wilkinson v. Austin</u> 545 U.S. 209, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005) .....	19, 20

OTHER JURISDICTIONS

<u>Nichols v. Warren</u> 209 Conn. 191, 550 A.2d 309 (1988) .....	12, 13
<u>State ex rel. Bailey v. Division of Corrections</u> 213 W. Va. 563, 584 S.E.2d 197 (2003) .....	10, 11, 12, 14, 16

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<b><u>RULES, STATUTES, AND OTHER AUTHORITIES</u></b>	
DOC Policy 350.100.....	3, 5
RAP 16.4.....	2
RCW 9.94.070 .....	15
RCW 9.94A.719 .....	7
RCW 9.94A.7281 .....	17
RCW 9.94A.729 .....	1, 2, 3, 4, 6, 7, 8, 12, 13, 15, 16, 17, 18
RCW 9.94A.729(3).....	1, 12
RCW 9.94A.905 .....	9
RCW 9.95.010 .....	9
RCW 9.95.040 .....	9
RCW 9.95.070 .....	5, 9
RCW 34.05.570 .....	7
RCW 72.09.015 .....	4
RCW 72.09.130 .....	5, 6, 7, 13, 15, 16, 18
CONN. GEN. STAT. § 18-7a(c) (1983).....	12
Laws of 2003, ch. 379, § 1.....	17

**TABLE OF AUTHORITIES (CONT'D)**

	Page
Sentencing Reform Act (SRA) .....	8, 9, 10
U.S. CONST. amend. V .....	16
U.S. CONST. amend. XIV .....	16
W. VA. CODE § 28-5-27(a) (1984) .....	12
W. VA. CODE § 28-5-27(b) (1984) .....	12
W. VA. CODE § 28-5-27(f) (1984) .....	11
W. VA. CODE § 28-5-27(g) (1984) .....	11
WAC 137-30-020 .....	3, 5
WAC 137-30-030 .....	1, 5
CONST. art. I, § 3 .....	16
WEBSTER'S THIRD NEW INT'L DICTIONARY 714 (1993) .....	6, 7

A. ISSUES PRESENTED IN SUPPLEMENTAL BRIEF

An inmate's sentence may be reduced by earned release time credits in accordance with procedures developed by the Department of Corrections (DOC). RCW 9.94A.729(1)(a) specifies, however, that DOC "shall not credit the offender with earned release credits in advance of the offender actually earning the credits."

1. Does this statutory language preclude DOC from revoking future good conduct time before it is actually earned?

2. Do case law, legislative history, and policy considerations compel the same conclusion?

B. SUPPLEMENTAL STATEMENT OF THE CASE

Clark Stuhr is currently serving a 425-month sentence for a 1988 Pacific County offense. He was also sentenced to 17 months for a 1991 Walla Walla County offense. Stuhr has not yet begun serving this second sentence because it runs consecutively to the first. Appendix A. On both sentences, Stuhr earns early release time at a rate of one-third of the total sentence. Appendix A; RCW 9.94A.729(3)(e); WAC 137-30-030(1)(c).

After several prison disciplinary hearings, Stuhr was found guilty of serious infractions. At that time, he had earned 20 days of good conduct time on the Pacific County sentence. Appendix B, at 6. He had not earned good conduct time on the Walla Walla County sentence

because he had not begun serving it. Appendix B, at 12. Nevertheless, DOC sanctioned Stuhr with the loss of all future good conduct time on both sentences: 2,812 days on the Pacific County sentence and 115 days on the Walla Walla County sentence, for a total of 2,927 days of future good conduct time. Appendix B, at 6; Appendix C.

Stuhr filed a personal restraint petition and opening brief on November 4, 2014, arguing DOC's revocation of all his future good conduct time violated due process and conflicted with RCW 9.94A.729(1)(a). On June 24, 2015, the acting chief judge at the Court of Appeals, Division II, issued a two-page order dismissing Stuhr's petition. This Court granted review and ordered counsel be appointed for Stuhr.

C. SUPPLEMENTAL ARGUMENT

DOC REGULATIONS AND POLICIES ALLOWING FOR  
REVOCATION OF FUTURE GOOD CONDUCT TIME  
IRRECONCILABLY CONFLICT WITH RCW 9.94A.729(1)(a).

Under RAP 16.4, "the appellate court will grant appropriate relief to a petitioner if the petitioner is under a 'restraint' as defined in section (b) and the petitioner[']s restraint is unlawful for one or more of the reasons defined in section (c)." A petitioner is under restraint if he or she is "confined." RAP 16.4(b). A restraint is unlawful if "[t]he conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington."

RAP 16.4(c)(6). Stuhr is under restraint by virtue of his incarceration. In re Pers. Restraint of Pullman, 167 Wn.2d 205, 211, 218 P.3d 913 (2009).

In its brief below, DOC argued it could properly revoke Stuhr's future good conduct time because "[g]ood conduct time' credits were awarded Stuhr at the commencement of his sentence; he does not 'earn' them, but he can lose them by being sanctioned for violating disciplinary rules." Br. of Resp't, at 5 (citing WAC 137-30-020; DOC Policy 350.100). This irreconcilably conflicts with the unambiguous language of RCW 9.94A.729(1)(a) and well-established case law, which mandates DOC cannot not credit an inmate with earned release time until the inmate actually earns it. Because Stuhr has not earned future good conduct time—a subset of earned release time—that time cannot be taken away from him. DOC's wrongful denial of Stuhr's future good conduct time constitutes an unlawful restraint.<sup>1</sup>

1. Under RCW 9.94A.729(1)(a), future good conduct time cannot be taken away because it does not exist until it is actually earned.

Statutory interpretation is a question of law reviewed de novo. State v. Gray, 174 Wn.2d 920, 926, 280 P.3d 1110 (2012). This Court's fundamental objective is to ascertain and carry out the legislature's intent.

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<sup>1</sup> In re Pers. Restraint of Reifschneider, 130 Wn. App. 498, 501, 123 P.3d 496 (2005) ("[A] DOC decision that wrongfully denies an inmate good-time credits results in an unlawful restraint of the inmate and can be challenged in a PRP if the inmate has had no other means of obtaining judicial review of the decision.").

Id. Statutory interpretation begins with the statute’s plain meaning, which is discerned from the ordinary meaning of the language used in the context of the entire statute, related provisions, and the statutory scheme as a whole. Id. at 926-27. If the statute is unambiguous, the court’s inquiry ends. Id. at 927.

Washington’s current sentencing scheme allows DOC to reduce sentences by awarding earned early release time (ERT). In re Pers. Restraint of Talley, 172 Wn.2d 642, 647, 260 P.3d 868 (2011). “Earned early release” means “earned release as authorized by RCW 9.94A.729.” RCW 72.09.015(9). RCW 9.94A.729(1)(a) provides:

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.

(Emphasis added.)

“Good time” is the colloquial name for earned release time. Talley, 172 Wn.2d at 647. It means the credit an inmate receives for the combination of good behavior (good conduct time) and good performance in prison programs (earned time). Id. at 647-48. DOC has defined “good

conduct time” as the “portion of an inmate’s potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.” WAC 137-30-020. DOC has defined “earned time” as the “portion of time an offender is eligible to earn for program participation.” Id.

DOC has promulgated rules and policies that allow it to sanction inmates with the loss of future earned release time and future good conduct time. For instance, WAC 137-30-030(1)(d) states: “ERT may be taken on a consecutive sentence that is not yet being served.” DOC Policy 350.100(II)(B) specifies the same. Appendix E, at 3.<sup>2</sup> WAC 137-30-030(2)(b) states: “Offenders may lose earned and future good conduct time if found guilty of certain serious infractions listed in WAC 137-25-030 and sanctioned per department policy.” DOC Policy 350.100(III)(B)(1) likewise specifies inmates “found guilty of a serious violation may be sanctioned to a loss of earned or future good conduct time.” Appendix E, at 4.

These rules and policies rest on a faulty premise: that earned release time and good conduct time are awarded to inmates at the outset of their sentence. See Br. of Resp’t, at 5. This premise conflicts with plain

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<sup>2</sup> The most current version is available online at DOC Policies Search, DEP’T OF CORR. WASH. STATE, <http://www.doc.wa.gov/policies/default.aspx?show=300> (last updated Sept. 21, 2015).

statutory language mandating DOC “shall not credit the offender with earned release credits in advance of the offender actually earning the credits.” RCW 9.94A.729(1)(a). The statute expressly forbids DOC from awarding earned release time before it is earned. In other words, earned release time does not exist until inmates earn it through their good behavior and their good performance. DOC therefore cannot sanction inmates with the loss of good conduct time that does not yet exist. Likewise, loss of “earned” release time on a consecutive sentence not yet being served runs afoul of this clear statutory mandate.

The plain meaning of the word “earn” demonstrates Stuhr’s position makes sense. Appellate courts consult the dictionary to determine the meaning of undefined statutory terms. *E.g.*, State v. Roden, 179 Wn.2d 893, 904, 321 P.3d 1183 (2014). “Earn” means “to receive as equitable return for work done or services rendered : have accredited to one as remuneration,” and “to come to be duly worthy of or entitled or suited to by way of reward, praise, penalty, or censure.” WEBSTER’S THIRD NEW INT’L DICTIONARY 714 (1993).

These definitions are consistent with RCW 72.09.130(1), which specifies “[e]arned early release days shall be recommended by the department as a reward for accomplishment.” (Emphasis added.) An inmate cannot be credited for future good conduct and certainly cannot

“accomplish” future good conduct. It defies logic and RCW 9.94A.729(1)(a) that DOC can nevertheless sanction an inmate with the loss of these not-yet-earned and therefore nonexistent credits.<sup>3</sup>

Agency rules are invalid if they exceed the agency’s statutory authority or if they are inconsistent with the statutes they implement. RCW 34.05.570(2)(c); Swinomish Indian Tribal Cmty. v. Dep’t of Ecology, 178 Wn.2d 571, 580-81, 311 P.3d 6 (2013). Courts, not agencies, have ultimate authority to interpret a statute. Bostain v. Food Express, Inc., 159 Wn.2d 700, 716, 153 P.3d 846 (2007). Thus, where a statute is unambiguous, “no deference is due the agency’s interpretation, regardless of whether it is stated in an agency rule.” Id. Furthermore, ““legislative acquiescence can never be interpreted as permission to ignore or violate statutory mandates.”” Id. at 716-17 (quoting Cockle v. Dep’t of Labor & Indus., 142 Wn.2d 801, 812, 16 P.3d 583 (2001)).

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<sup>3</sup> “Credit” has many definitions, including “an amount or limit to the extent of which a person may receive goods or money for payment in the future.” WEBSTER’S, supra, at 532. This Court should reject any argument by DOC that this definition or similar definitions of “credit” allow for an award of future good conduct time. Such an argument would be inconsistent with the requirements that early release credits are a “reward for accomplishment,” RCW 72.09.130(1), and must be “actually earn[ed],” RCW 9.94A.729(1)(a). Early release credits exist in the future to the extent that, once they have been earned, they impact the inmate’s future release date. The simple definition, “the balance in a person’s favor in an account,” is accordingly more apt given these clear statutory directives. WEBSTER’S, supra, at 532.

Case law is in accord with Stuhr's reading of the statute. Washington courts have explained "early release credits must be earned, rather than credited automatically or in advance." In re Pers. Restraint of Erickson, 146 Wn. App. 576, 584, 191 P.3d 917 (2008); accord Reifschneider, 130 Wn. App. at 504 ("An inmate earns good-time credit as he serves time in confinement (not in advance)."). Similarly, DOC's "mere projection of an earned early release date does not amount to an award of good-time credits." Reifschneider, 130 Wn. App. at 504.

This Court detailed the process for awarding earned release time in In re Pers. Restraint of Fogle, 128 Wn.2d 56, 59-60, 904 P.2d 722 (1995). For good behavior, an inmate earns 10 days of good conduct time for every 30 days served. Id. at 59. "[G]enerally, the prisoner is presumed to have earned the full good-conduct time available unless the facility specifically deducts for misbehavior." Id. For participation in work, academic, and treatment programs, an inmate earns five days of earned time for every 30 days served. Id. DOC "then combines the total good-conduct and earned time, up to one-half of the days served, to determine the final sentence reduction, up to the statutory maximum of one-third of the imposed sentence." Id. at 60. This demonstrates good conduct time is not available—for award or for sanction—until it is earned.

Though RCW 9.94A.729(1)(a) is unambiguous, legislative history supports this conclusion. The Sentencing Reform Act (SRA), chapter 9.94A RCW, was enacted in 1981 and took effect on July 1, 1984. RCW 9.94A.905. Individuals incarcerated for offenses committed before July 1, 1984 are subject to the former indeterminate sentencing scheme of chapter 9.95 RCW. In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 142, 866 P.2d 8 (1994).

Under the indeterminate sentencing system, trial courts were required to set a maximum sentence. RCW 9.95.010. The Indeterminate Sentence Review Board (the Board) was then required to fix an inmate's minimum term. RCW 9.95.040. From there, inmates who had "a favorable record of conduct" and who performed work in "a faithful, diligent, industrious, orderly and peaceable manner" were "allowed time credit reductions from the term of imprisonment fixed by the board." RCW 9.95.070(1). Similar to the SRA, then, inmates could be awarded "good time credits" for good conduct and good work performance. In re Pers. Restraint of Cashaw, 68 Wn. App. 112, 115, 839 P.2d 332 (1992), aff'd on other grounds, Cashaw, 123 Wn.2d 138.

Unlike the SRA, however, RCW 9.95.080 expressly authorized the Board to revoke "all or a portion of credits earned or to be earned" as punishment for prison infractions. (Emphasis added.) Courts recognized

this “harsh penalty” allowed for “loss of credits already earned pursuant to RCW 9.95.070, or which could have been earned in the future.” In re Pers. Restraint of Piercy, 101 Wn.2d 490, 495, 681 P.2d 223 (1984).

Thus, the prior sentencing scheme permitted the Board to revoke future good time. The legislature knows how write a statute that allows for the revocation of future good time, but included no such language in the current sentencing scheme. See State v. Roberts, 117 Wn.2d 576, 586, 817 P.2d 855 (1991) (recognizing use of certain statutory language in one instance, and different language in another, evinces different legislative intent). The SRA resulted in “significant differences in the nature and treatment of what was formerly ‘good time credit.’” Pullman, 167 Wn.2d at 218. DOC’s authority to revoke future good time did not survive.

In summary, under the current sentencing scheme, good conduct time does not exist until it is actually earned. DOC rules and policies that allow for revocation of future good conduct time conflict with this clear statutory mandate and are therefore invalid.

2. Out-of-state cases and policy considerations further demonstrate future good conduct time cannot be revoked.

State ex rel. Bailey v. Division of Corrections, 213 W. Va. 563, 584 S.E.2d 197 (2003), provides a useful analogy. There, Bailey violated several prison rules and was sanctioned with the loss of all his earned and

future good time. Id. at 199. On appeal, Bailey argued “a day of good time does not exist until an inmate has served a day without incident, thus it should be impossible for prison authorities to take away more days of good time than an inmate has served.” Id. at 200.

The State, similar to DOC here, argued inmates could lose future good time because the controlling statute effectively required the State to grant good time all at once at the beginning of an inmate’s sentence. Id. at 202. For instance, the statute specified each inmate, upon commitment, “shall be given a statement setting forth the term or length of his or her sentence or sentences and the time of his minimum discharge computed according to this section.” Id. (quoting W. VA. CODE § 28-5-27(g) (1984)). The Bailey court agreed this provision required calculation of an inmate’s maximum potential good time. Id. at 202-03.

The court disagreed, however, that the statute demanded a grant of good time at the outset of an inmate’s sentence. Id. at 203. Instead, like Washington, “there are two important ingredients to each day of good time, first that the inmate serve one day in prison, and second that the inmate ‘be good’ on that day.” Id. The statute also specified that for each prison rule violation, “any part or all of the good time which has been granted to such inmate pursuant to this section may be forfeited and revoked . . . .” Id. at 202 (quoting W. VA. CODE § 28-5-27(f) (1984)).

Therefore, an inmate could be sanctioned only with the loss of “good time which has been granted”—in other words, “those days that an inmate has actually earned by being incarcerated and behaving appropriately.” Id. at 203 (emphasis added). The court accordingly ordered the State to restore all of Bailey’s future good time. Id.

The West Virginia good time statute differs from Washington’s in that it mandates the award of good time and the rate at which it is earned.<sup>4</sup> However, the West Virginia statute is comparable to Washington’s in that good time credits do not exist until they are actually earned through good behavior. The logic and conclusion of Bailey is therefore persuasive.

The Connecticut Supreme Court reached the same conclusion in Nichols v. Warren, 209 Conn. 191, 550 A.2d 309 (1988), based on similar statutory language. Like RCW 9.94A.729, the Connecticut good time statute allowed an inmate to “earn a reduction of his sentence as such sentence is served’ for ‘good conduct and obedience to the rules.’” Nichols, 550 A.2d at 312 (quoting CONN. GEN. STAT. § 18-7a(c) (1983)). The statute also provided for revocation of good time credit: “Misconduct

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<sup>4</sup> Compare W. VA. CODE § 28-5-27(a) (1984) (“All adult inmates . . . shall be granted commutation from their sentences for good conduct in accordance with this section.”), and W. VA. CODE § 28-5-27(b) (1984) (“Each inmate . . . shall be granted one day good time for each day he or she is incarcerated.”), with RCW 9.94A.729 (1)(a) (“The term of the sentence of an offender . . . may be reduced by earned release time.”), and RCW 9.94A.729(3) (specifying rates at which inmates “may earn early release time,” depending on their offense).

or refusal to obey the rules which have been established for the service of his sentence shall subject the prisoner to the loss of all or any portion of such reduction by the commissioner or his designee.” Id. (quoting CONN. GEN. STAT. § 18-7a(c) (1983)).

The Nichols court held the plain language of these provisions prohibited the commissioner of correction from “diminish[ing] an inmate’s good time sentence reduction for improper behavior until the inmate earns the reduction as the sentence is served.” Id. at 313. Under the prior sentencing scheme, inmates were awarded all possible good time at the beginning of their sentence. Id. at 314. If an inmate behaved improperly, the commissioner restored the deducted days to the sentence. Id. Under the current scheme, however, “the good time credit is not ‘reachable’ until it is earned on a month-to-month basis.” Id. at 315. Administrative policies allowing for prospective forfeiture conflicted with this statutory mandate and were not entitled to deference. Id.

Washington’s system is like Connecticut’s: good conduct time is not “reachable” until it is earned. DOC may “recommend[] increases or decreases in the number of earned early release days that an inmate can earn for good conduct and good performance.” RCW 72.09.130(1). By this plain language, DOC may decrease an inmate’s “earned early release days,” which means only those days “actually earn[ed]” through good

conduct and good performance. RCW 9.94A.729(1)(a). Connecticut's good time statute is also similar to Washington's in that it used to but no longer allows for forfeiture of future good time.

Policy considerations also support Stuhr's argument. In dismissing Stuhr's petition, the Court of Appeals reasoned, "If the Department were unable to deduct future good time from a current or consecutive sentence, it would lose an important incentive for maintaining good prison behavior." Order, at 2. Unconvinced, the Bailey court rejected such flawed reasoning:

We note that respondents argue that ruling in favor of Mr. Bailey could encourage new inmates, who have served little time and thus have little good time to lose, to misbehave, and that not allowing the prospective revocation of all possible good time strips the respondents of a valuable tool to control the inmate population. However, the obvious corollary to respondents' argument is that, once all the good time has been taken away from inmates like Mr. Bailey, the respondents will have then lost this tool anyway. Respondents argue that, to encourage good behavior from inmates who have lost all potential good time, they still may use the revocation of other privileges, or segregation. However, an equally strong argument can be made that these other tools may be used just as effectively on new inmates, who have little good time to lose.

584 S.E.2d at 203. The same is true here. Without the opportunity to earn any more good conduct time, Stuhr has little incentive to behave for the remaining 10 years of his sentence.

Although DOC cannot sanction an inmate with the loss of future good conduct time, it retains an arsenal of other disciplinary tools. For instance, DOC may grant or deny inmates “other privileges,” such as “increases or decreases in the degree of liberty granted the inmate within the programs operated by the department,” and “access to or withholding of privileges available within correctional institutions.” RCW 72.09.130(1). Further, though not applicable to Stuhr, an inmate who commits a serious infraction but has lost all “potential earned early release time credit” may be charged with the crime of persistent prison misbehavior, a class C felony.<sup>5</sup> RCW 9.94.070(1).

The Department may argue the persistent prison misbehavior statute demonstrates legislative intent to allow DOC to revoke future good conduct time, pointing to the word “potential.” But this single word cannot be read in isolation—it is controlled by the associated words “earned early release time credit.” See State v. Donery, 131 Wn. App. 667, 671, 128 P.3d 1262 (2006) (defining these terms by reference to RCW 9.94A.728 and .729).<sup>6</sup> As discussed, RCW 9.94A.729(1)(a)

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<sup>5</sup> The persistent prison misbehavior statute applies only to an inmate “who is serving a sentence for an offense committed on or after August 1, 1995.” RCW 9.94.070(1). Stuhr’s offenses were committed before that date.

<sup>6</sup> See also State v. Roggenkamp, 153 Wn.2d 614, 633, 106 P.3d 196 (2005) (“Harmonization is especially necessary when ‘statutes relate to the same thing

specifies earned release time does not exist in advance of it being earned. It would therefore be an oxymoron to read “potential” as “future” in this context. “Potential” means simply that an inmate has lost all possible early release time he or she could have earned to date.

“It is vitally important to the orderly operation of our prisons that inmates believe they will be rewarded for good behavior.” Bailey, 584 S.E.2d at 200. Sanctioning inmates with the loss of future good conduct time conflicts with the plain statutory language of RCW 9.94A.729(1)(a) and RCW 72.09.130. It also deprives them the vitally important opportunity to earn good conduct time for the remainder of their sentence. This Court should reverse the Court of Appeals, grant Stuhr’s petition, and order DOC to restore all his future good conduct time.

3. If DOC is correct that it can revoke future good conduct time, then inmates have a liberty interest in that good conduct time and are entitled to due process of law.

The unintended consequence of DOC’s position is that it will create liberty interests DOC has worked hard to extinguish. If DOC awards good conduct time at the outset of each sentence, then inmates have a liberty interest in that future good conduct time and are entitled to procedural and substantive due process protections.

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or class,’ in which case they are in pari materia.” (quoting Monroe v. Soliz, 132 Wn.2d 414, 425, 939 P.2d 205 (1997)).

No person may be deprived of life, liberty, or property without due process of law. U.S. CONST. amends. V, XIV; CONST. art. I, § 3. A liberty interest may arise from an expectation created by state laws or policies. In re Pers. Restraint of McCarthy, 161 Wn.2d 234, 240, 164 P.3d 1283 (2007). “[P]rocedural due process requires that an individual receive notice of the deprivation and an opportunity to be heard to guard against erroneous deprivation.” Amunrud v. Bd. of Appeals, 158 Wn.2d 208, 216, 143 P.3d 571 (2006). “Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures.” Id. at 218-19.

In 2003, the legislature increased the maximum amount of time qualified inmates could earn from one-third to one-half of their total sentence. Laws of 2003, ch. 379, § 1. In Pullman, this Court held the 2003 amendment did not create a liberty interest or entitlement to earn early release time at a 50 percent rate. 167 Wn.2d at 213-24. The relevant language in RCW 9.94A.729 is permissive, not mandatory: “DOC is not required to grant a ‘fifty percent’ sentence reduction; the legislature’s 2003 amendment merely gives DOC permission to grant offenders ‘up to fifty percent’ of their sentence in earned release time depending on the offender’s risk level.” Pullman, 167 Wn.2d at 214. Further, the legislature expressly stated in RCW 9.94A.7281 that the amendment did

not create any expectation, entitlement, or liberty interest in earning the maximum early release time.

It appears the permissive language of these statutes was intended to avoid creating a liberty interest in earned release time before it is earned. See Pullman, 167 Wn.2d at 215-18. This explains the legislature's prohibition that DOC "not credit the offender with earned release credits in advance of the offender actually earning the credits," RCW 9.94A.729(1)(a), and the statement of purpose that "[e]arned early release days shall be . . . a reward for accomplishment," RCW 72.09.130(2). DOC's claim that it awards good conduct time at the outset of an inmate's sentence conflicts with this purpose and conflicts with Pullman.

However, if this Court determines DOC properly awards inmates all possible good conduct time up front, then a liberty interest is created, even if the statute does not create one. This essentially reverts back to the prior sentencing scheme, which allowed for "forfeiture of all or a portion of credits earned or to be earned." RCW 9.95.080. Before future good time could be revoked, the Board was required to hold a hearing at which "the convicted person shall be present and entitled to be heard and may present evidence and witnesses in his or her behalf." Id.; accord Monohan v. Burdman, 84 Wn.2d 922, 926, 530 P.2d 334 (1975) (noting RCW 9.95.080 provided for "minimal due process hearings").

Further, in Monohan, this Court explained the former system of establishing a tentative parole date in advance created “justifiable reliance” on that prefixed release date, “so long as [the inmate] otherwise abides by the conditions of his incarceration.” 84 Wn.2d at 928; see also Pullman, 167 Wn.2d at 215 (discussing Monohan). Therefore, once “a promise of parole has been granted in the form of a tentative release date . . . the prospective parolee enjoys a unique status and is deserving of minimal due process safeguards before cancellation of that date . . . .” Monohan, 84 Wn.2d at 929. The same is true here under DOC’s position.

The U.S. Supreme Court has likewise held that a liberty interest in avoiding particular conditions of confinement may arise from prison policies or regulations. Wilkinson v. Austin, 545 U.S. 209, 222, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005). The relevant inquiry is whether the regulation “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). In Sandin, the Court found no liberty interest protecting against 30 days of segregated confinement because it did not “present a dramatic departure from the basic conditions of [the inmate’s] sentence.” Id. at 485. By contrast, placement in a “supermax” security prison with extremely limited human

contact “impose[d] an atypical and significant hardship” sufficient to create a liberty interest. Wilkinson, 545 U.S. at 224.

Stuhr was sanctioned with the loss of all future good conduct time he could ever earn on both sentences, for a total of more than eight years of future good conduct time. The loss of eight years off his sentence is an atypical and significant hardship more akin to Wilkinson than Sandin. This creates a liberty interest entitling Stuhr to procedural and substantive due process protections. In the alternative, then, this Court should remand for a hearing to determine whether Stuhr received adequate due process.

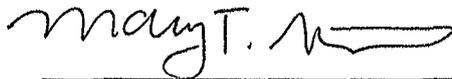
D. CONCLUSION

Stuhr respectfully asks this Court to reverse the Court of Appeals, grant his personal restraint petition, and order DOC to restore all future good conduct time on both sentences.

DATED this 22<sup>nd</sup> day of February, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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MARY T. SWIFT  
WSBA No. 45668  
Office ID No. 91051

Attorneys for Petitioner

# Appendix A

**Inmate: STUHR, Clark L (947192)**

Gender: Male	DOB:	Age: 48	Category: Regular Inmate	Body Status: Active Inmate
RLC: MOD	Wrap-Around: No	Comm. Concern: No	Custody Level: Minimum 3 - Long Term Minimum	Location: SCCC — H1 / H1121U
ERD: 06/07/2025	CC/CCO: Brule, Christine R			

**Offender Information (Inmate)**

Prison Max Expiration Date:	09/02/2027	Last Static Risk Assessment Date:	06/20/2013	DOSA:
Planned Release Date:		Last Offender Need Assessment Date:	10/16/2014	ISRB? No
Earned Release Date:	06/07/2025	Offender Release Plan:	Unknown	CCB? No
ESR Sex Offender Level:		Victim Witness Eligible?	Yes	SOSSA? No
ESR Sex Offender Level Date:		County Of First Felony Conviction:	Pacific	WEP? No
Registration Required?				
ORCS?				
IDCNF?	No			
SMIO?	No			

**Sentence Structure (Inmate)**

**Cause: AA - 881001004 - Pacific**

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Clark Stuhr	01/06/1989	
Time Start Date:	Confinement Length:	Earned Release Date:	
	0Y, 0M, 0D		

**Count: 1 - RCW 9A.52.030 - Burglary 2**

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 0M, 0D	%				No
Supervision Type:	Supervision Length:	Consecutive Count:				Hold To Stat Max Expiration:			
SUP	0Y, 24M, 0D								

**Cause: AB - 881001268 - Pacific**

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Clark Stuhr	03/10/1989	
Time Start Date:	Confinement Length:	Earned Release Date:	
03/10/1989	0Y, 425M, 0D	04/18/2024	

**Count: 1 - RCW 9A.32.030(1)(a) - Murder 1**

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: ERT %: ERD: MaxEx: Stat Max: Violent Offense?  
0Y, 425M, 0D 33.33% 04/18/2024 05/23/2027 Life Yes

Supervision Type: CP  
Supervision Length: 0Y, 12M, 0D  
Consecutive Count:  
Hold To Stat Max Expiration:

**Cause: AC - 911001143 - Walla Walla**

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State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Clark Stuhr	09/09/1991	AB - 881001268 - Pacific
Time Start Date:	Confinement Length:	Earned Release Date:	
04/18/2024	0Y, 17M, 0D	06/07/2025	

**Count: 1 - RCW 9A.36.021 - Assault 2**

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: ERT %: ERD: MaxEx: Stat Max: Violent Offense?  
0Y, 17M, 0D 33.33% 06/07/2025 09/02/2027 04/17/2036 Yes

Supervision Type: CP  
Supervision Length: 0Y, 12M, 0D  
Consecutive Count:  
Hold To Stat Max Expiration:

# Appendix B

Record of Earned Release Time

Date: 2/11/2014

Offender Name:

Doc No.:

Assigned Staff Name:

STUHR, Clark L

947192

Zavodny, Dee A

Sentence Data

Cause No:	County:	Start of Cause:	Report End Date:
881001268	Pacific	3/10/1989	2/11/2014
Earned Release Date:	Total Confinement Length for Cause:		
3/10/2025	12,935		

Earned Time Percentage by Count

1 - 33.33%

Earned Time					
Start Date	End Date	Earned Time (hrs)	Reason	Offender Location	Days
4/1/1997	5/1/1997	Earned		WCC-IMU	5.00
11/1/1998	12/1/1998	Not Earned	Segregation	CBCC-Close Cust	5.00
3/1/1997	4/1/1997	Not Earned	Segregation	WSP-IMU	5.17
10/1/1998	11/1/1998	Not Earned	Segregation	CBCC-Close Cust	5.17
7/1/1999	8/1/1999	Not Earned	Not Programming or Working	CBCC-Close Cust	5.17
8/1/2001	9/1/2001	Not Earned	Segregation	WCC-IMU	5.17
1/1/2002	2/1/2002	Earned		WCC-IMU	5.17
5/1/2010	6/1/2010	Earned	Update Required	WCC-TC	5.17
3/1/2013	4/1/2013	Earned		SCCC	5.17
8/1/2013	9/1/2013	Not Earned	Segregation	SCCC	5.17
1/1/1993	3/1/1993	Not Earned	Segregation	Interstate Compact Inmates	9.83
2/1/2002	4/1/2002	Earned		WCC-IMU	9.83
5/1/2005	7/1/2005	Earned		WSP-Main	10.17
6/1/2007	8/1/2007	Not Earned	Segregation	MICC-IMU (closed)	10.17
6/1/2009	8/1/2009	Not Earned	Segregation	WSP-IMU	10.17

EXHIBIT "1"

3/1/1993	5/2/1993	Earned		Interstate Compact Inmates	10.33
12/12/1989	2/22/1990	Not Earned	No Longer Valid	WSP-IMU	12.00
9/20/1989	12/12/1989	Not Earned	No Longer Valid	WCC-IMU	13.83
12/1/1998	3/1/1999	Earned		CBCC-Close Cust	15.00
10/1/1992	1/1/1993	Not Earned	Segregation	Interstate Compact Inmates	15.33
5/1/2001	8/1/2001	Earned		SCCC-IMU	15.33
7/1/2004	10/1/2004	Earned		MCC-SOU	15.33
10/1/2006	1/1/2007	Earned		WSP-Main	15.33
3/1/2009	6/1/2009	Earned		WSP-IMU	15.33
5/2/1993	9/1/1995	Not Earned	Segregation	WSP-IMU	20.93
3/1/1999	7/1/1999	Earned		CBCC-Close Cust	20.33
9/1/2001	1/1/2002	Earned		MCC-WSR	20.33
4/1/2013	8/1/2013	Earned	Update Required	SCCC	20.33
10/10/2008	3/1/2009	Not Earned	Segregation	MCC-IMU	23.66
10/1/1996	3/1/1997	Not Earned	Segregation	WSP-IMU	25.16
10/1/1997	3/1/1998	Earned		CBCC-Close Cust	25.16
1/1/2007	6/1/2007	Not Earned	Segregation	WSP-IMU	25.16
5/1/1997	10/1/1997	Not Earned	Segregation	CBCC-IMU	25.50
7/1/2003	12/1/2003	Not Earned	Segregation	CBCC-IMU	25.50
9/1/2013	2/1/2014	Earned	Update Required	SCCC	25.50
3/29/1989	9/20/1989	Earned		WSP-IMU	29.16
11/1/2000	5/1/2001	Not Earned	Segregation	WCC-IMU	30.16
9/1/1995	3/1/1996	Not Earned	Segregation	WSP-IMU	30.33
10/1/2004	5/1/2005	Earned		WSP-Main	35.33
12/1/2003	7/1/2004	Earned		SCCC-IMU	35.49
3/1/1992	10/1/1992	Earned		WSP-IMU	35.66
3/1/1996	10/1/1996	Not Earned	Segregation	WSP-IMU	35.66
3/1/1998	10/1/1998	Earned		CBCC-Close Cust	35.66
8/1/2009	5/1/2010	Earned		WCC-IMU	45.49
3/18/1991	3/1/1992	Not Earned	Segregation	WSP-IMU	58.16
2/22/1990	3/18/1991	Not Earned	Segregation	WSP-IMU	64.82
6/1/2010	8/1/2011	Not Earned	Segregation	WCC-IMU	70.99
8/1/2007	10/10/2008	Not Earned	Segregation	WSP-Main	72.66

4/1/2002	7/1/2003	Not Earned	Segregation	CBCC-IMU	75.99
7/1/2005	10/1/2006	Not Earned	Segregation	WSP-Maln	76.16
8/1/1999	11/1/2000	Earned		CBCC-IMU	76.32
8/1/2011	3/1/2013	Earned		CRCC	96.32

Good Conduct Time					
Date	Description	Location	Days Lost for this Report Period		
5/11/1989	ASSAULT/NON HOSP	WSP-Maln			
5/11/1989	DANGEROUS INFRA.	WSP-Maln			
					30
7/20/1989	ASSAULT/NON HOSP	WSP-IMU			
7/20/1989	ATTEMPT INFRAC.	WSP-IMU			
7/20/1989	DANGEROUS INFRA.	WSP-IMU			
7/20/1989	STAFF INTERFER.	WSP-IMU			
					80
10/5/1989	ASSAULT/NON HOSP	WCC-IMU			
					180
11/30/1989	ASSAULT/NON HOSP	WCC-IMU			
11/30/1989	INTERFER W/COUNT	WCC-IMU			
11/30/1989	THROWING OBJECTS	WCC-IMU			
					30
12/6/1989	ASSAULT/NON HOSP	WCC-IMU			
					10
4/6/1990	THROWING OBJECTS	WSP-IMU			
					30
4/6/1990	DESTROY PROPERTY	WSP-IMU			
					30
4/6/1990	THROWING OBJECTS	WSP-IMU			
					30
4/6/1990	DESTROY PROPERTY	WSP-IMU			
					30
4/4/1990	ASSAULT/NON HOSP	WSP-IMU			
4/4/1990	DANGEROUS INFRA.	WSP-IMU			
4/4/1990	DESTROY PROPERTY	WSP-IMU			

4/4/1990	POSSESS WEAPON	WSP-IMU	
4/4/1990	THREATENING	WSP-IMU	
4/4/1990	THROWING OBJECTS	WSP-IMU	
			360
4/10/1990	DESTROY PROPERTY	WSP-IMU	
4/10/1990	STAFF INTERFER.	WSP-IMU	
			30
4/11/1990	THREATENING	WSP-IMU	
			30
4/13/1990	DANGEROUS INFRA.	WSP-IMU	
4/13/1990	THROWING OBJECTS	WSP-IMU	
			30
4/13/1990	DANGEROUS INFRA.	WSP-IMU	
4/13/1990	THROWING OBJECTS	WSP-IMU	
			30
5/16/1990	ASSAULT/NON HOSP	WSP-IMU	
			180
5/18/1990	ASSAULT/NON HOSP	WSP-IMU	
			180
5/31/1990	ASSAULT/NON HOSP	WSP-IMU	
			90
5/31/1990	THROWING OBJECTS	WSP-IMU	
			30
7/13/1990	ASSAULT/NON HOSP	WSP-IMU	
7/13/1990	THREATENING	WSP-IMU	
			180
8/10/1990	DANGEROUS INFRA.	WSP-IMU	
8/10/1990	THREATENING	WSP-IMU	
8/10/1990	THROWING OBJECTS	WSP-IMU	
			30
8/22/1990	DANGEROUS INFRA.	WSP-IMU	
8/22/1990	TAMPER WITH LOCK	WSP-IMU	
			15

8/22/1990	DANGEROUS INFRA.	WSP-IMU	
8/22/1990	DESTROY PROPERTY	WSP-IMU	
8/22/1990	TAMPER WITH LOCK	WSP-IMU	
30			
10/4/1990	DANGEROUS INFRA.	WSP-IMU	
10/4/1990	TAMPER WITH LOCK	WSP-IMU	
30			
10/3/1990	ASSAULT/NON HOSP	WSP-IMU	
30			
10/10/1990	DANGEROUS INFRA.	WSP-IMU	
10/10/1990	POSS UNAUTH TOOL	WSP-IMU	
30			
10/10/1990	DANGEROUS INFRA.	WSP-IMU	
10/10/1990	THROWING OBJECTS	WSP-IMU	
30			
10/12/1990	DANGEROUS INFRA.	WSP-IMU	
10/12/1990	DESTROY PROPERTY	WSP-IMU	
10/12/1990	POSSESS WEAPON	WSP-IMU	
30			
2/19/1991	ASSAULT/NON HOSP	WSP-IMU	
2/19/1991	POSSESS WEAPON	WSP-IMU	
2/19/1991	THROWING OBJECTS	WSP-IMU	
360			
2/19/1991	ASSAULT/HOSPITAL (AG ASSAULT/INMATE)	WSP-IMU	
2/19/1991	ASSAULT/NON HOSP	WSP-IMU	
2/19/1991	DANGEROUS INFRA.	WSP-IMU	
2/19/1991	STAFF INTERFER.	WSP-IMU	
77			
2/23/1996	POSSESS WEAPON	WSP-IMU	
15			
7/29/2013	REFUSE UA TEST	SCCC	
5			

8/17/2013	REFUSE UA TEST	SCCC	
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Total Good Conduct Time (GCT)			
Potential GCT for this Cause	Total GCT Lost to Date	Available GCT	
2,832	2,812	20	

Total Earned Time (ET)			
Potential ET for this Cause	ET Not Earned	Earned Time Earned	Available ET
1415.83	765.55	628.24	22.04

Offender Signature Block:

\_\_\_\_\_  
Offender Signature

\_\_\_\_\_  
Date

Record of Earned Release Time

Date: 2/11/2014

Offender Name:

Doc No.:

Assigned Staff Name:

STUHR, Clark L

947192

Zavodny, Dee A

Sentence Data

Cause No:	County:	Start of Cause:	Report End Date:
911001143	Walla Walla	3/31/2024	2/11/2014
Earned Release Date:	Total Confinement Length for Cause:		
3/10/2025	517		

Earned Time Percentage by Count

1 - 33.33%

Earned Time

Start Date	End Date	Earned Time Type	Reason	Offender Location	Days
4/1/1997	5/1/1997	Earned		WCC-IMU	5.00
11/1/1998	12/1/1998	Not Earned	Segregation	CBCC-Close Cust	5.00
3/1/1997	4/1/1997	Not Earned	Segregation	WSP-IMU	5.17
10/1/1998	11/1/1998	Not Earned	Segregation	CBCC-Close Cust	5.17
7/1/1999	8/1/1999	Not Earned	Not Programming or Working	CBCC-Close Cust	5.17
8/1/2001	9/1/2001	Not Earned	Segregation	WCC-IMU	5.17
1/1/2002	2/1/2002	Earned		WCC-IMU	5.17
5/1/2010	6/1/2010	Earned	Update Required	WCC-TC	5.17
3/1/2013	4/1/2013	Earned		SCCC	5.17
8/1/2013	9/1/2013	Not Earned	Segregation	SCCC	5.17
1/1/1993	3/1/1993	Not Earned	Segregation	Interstate Compact Inmates	9.83
2/1/2002	4/1/2002	Earned		WCC-IMU	9.83
5/1/2005	7/1/2005	Earned		WSP-Main	10.17
6/1/2007	8/1/2007	Not Earned	Segregation	MICC-IMU (closed)	10.17
6/1/2009	8/1/2009	Not Earned	Segregation	WSP-IMU	10.17

9/1/1993	5/2/1993	Earned		Interstate Compact Inmates	10.33
12/12/1989	2/22/1990	Not Earned	No Longer Valld	WSP-IMU	12.00
9/20/1989	12/12/1989	Not Earned	No Longer Valld	WCC-IMU	13.83
12/1/1998	3/1/1999	Earned		CBCC-Close Cust	15.00
10/1/1992	1/1/1993	Not Earned	Segregation	Interstate Compact Inmates	15.33
5/1/2001	8/1/2001	Earned		SCCC-IMU	15.33
7/1/2004	10/1/2004	Earned		MCC-SOU	15.33
10/1/2006	1/1/2007	Earned		WSP-Main	15.33
3/1/2009	6/1/2009	Earned		WSP-IMU	15.33
5/2/1993	9/1/1995	Not Earned	Segregation	WSP-IMU	20.33
3/1/1999	7/1/1999	Earned		CBCC-Close Cust	20.33
9/1/2001	1/1/2002	Earned		MCC-WSR	20.33
4/1/2013	8/1/2013	Earned	Update Required	SCCC	20.33
10/10/2008	3/1/2009	Not Earned	Segregation	MCC-IMU	23.66
10/1/1996	3/1/1997	Not Earned	Segregation	WSP-IMU	25.16
10/1/1997	3/1/1998	Earned		CBCC-Close Cust	25.16
1/1/2007	6/1/2007	Not Earned	Segregation	WSP-IMU	25.16
6/1/1997	10/1/1997	Not Earned	Segregation	CBCC-IMU	25.50
7/1/2003	12/1/2003	Not Earned	Segregation	CBCC-IMU	25.50
9/1/2013	2/1/2014	Earned	Update Required	SCCC	25.50
3/29/1989	9/20/1989	Earned		WSP-IMU	29.16
11/1/2000	5/1/2001	Not Earned	Segregation	WCC-IMU	30.16
9/1/1995	3/1/1996	Not Earned	Segregation	WSP-IMU	30.33
10/1/2004	5/1/2005	Earned		WSP-Main	35.33
12/1/2003	7/1/2004	Earned		SCCC-IMU	35.49
3/1/1992	10/1/1992	Earned		WSP-IMU	35.66
3/1/1996	10/1/1996	Not Earned	Segregation	WSP-IMU	35.66
3/1/1998	10/1/1998	Earned		CBCC-Close Cust	35.66
8/1/2009	5/1/2010	Earned		WCC-IMU	45.49
3/18/1991	3/1/1992	Not Earned	Segregation	WSP-IMU	58.16
2/22/1990	3/18/1991	Not Earned	Segregation	WSP-IMU	64.82
6/1/2010	8/1/2011	Not Earned	Segregation	WCC-IMU	70.99
8/1/2007	10/10/2008	Not Earned	Segregation	WSP-Main	72.66

4/1/2002	7/1/2003	Not Earned	Segregation	CBCC-IMU	75.99
7/1/2005	10/1/2006	Not Earned	Segregation	WSP-Main	76.16
8/1/1999	11/1/2000	Earned		CBCC-IMU	76.32
8/1/2011	3/1/2013	Earned		CRCC	96.32

Good Conduct Time					
Date	Description	Location	Days Lost for this Report Period		
5/11/1989	ASSAULT/NON HOSP	WSP-Main			
5/11/1989	DANGEROUS INFRA.	WSP-Main			
					30
7/20/1989	ASSAULT/NON HOSP	WSP-IMU			
7/20/1989	ATTEMPT INFRAC.	WSP-IMU			
7/20/1989	DANGEROUS INFRA.	WSP-IMU			
7/20/1989	STAFF INTERFER.	WSP-IMU			
					180
10/5/1989	ASSAULT/NON HOSP	WCC-IMU			
					180
11/30/1989	ASSAULT/NON HOSP	WCC-IMU			
11/30/1989	INTERFER W/COUNT	WCC-IMU			
11/30/1989	THROWING OBJECTS	WCC-IMU			
					30
12/6/1989	ASSAULT/NON HOSP	WCC-IMU			
					10
4/6/1990	THROWING OBJECTS	WSP-IMU			
					30
4/6/1990	DESTROY PROPERTY	WSP-IMU			
					30
4/6/1990	THROWING OBJECTS	WSP-IMU			
					30
4/6/1990	DESTROY PROPERTY	WSP-IMU			
					30
4/4/1990	ASSAULT/NON HOSP	WSP-IMU			
4/4/1990	DANGEROUS INFRA.	WSP-IMU			
4/4/1990	DESTROY PROPERTY	WSP-IMU			

4/4/1990	POSSESS WEAPON	WSP-IMU	
4/4/1990	THREATENING	WSP-IMU	
4/4/1990	THROWING OBJECTS	WSP-IMU	
			360
4/10/1990	DESTROY PROPERTY	WSP-IMU	
4/10/1990	STAFF INTERFER.	WSP-IMU	
			90
4/11/1990	THREATENING	WSP-IMU	
			30
4/13/1990	DANGEROUS INFRA.	WSP-IMU	
4/13/1990	THROWING OBJECTS	WSP-IMU	
			30
4/13/1990	DANGEROUS INFRA.	WSP-IMU	
4/13/1990	THROWING OBJECTS	WSP-IMU	
			30
5/16/1990	ASSAULT/NON HOSP	WSP-IMU	
			180
5/18/1990	ASSAULT/NON HOSP	WSP-IMU	
			180
5/31/1990	ASSAULT/NON HOSP	WSP-IMU	
			90
5/31/1990	THROWING OBJECTS	WSP-IMU	
			30
7/13/1990	ASSAULT/NON HOSP	WSP-IMU	
7/13/1990	THREATENING	WSP-IMU	
			180
8/10/1990	DANGEROUS INFRA.	WSP-IMU	
8/10/1990	THREATENING	WSP-IMU	
8/10/1990	THROWING OBJECTS	WSP-IMU	
			30
8/22/1990	DANGEROUS INFRA.	WSP-IMU	
8/22/1990	TAMPER WITH LOCK	WSP-IMU	
			15

8/22/1990	DANGEROUS INFRA.	WSP-IMU	
8/22/1990	DESTROY PROPERTY	WSP-IMU	
8/22/1990	TAMPER WITH LOCK	WSP-IMU	
30			
10/4/1990	DANGEROUS INFRA.	WSP-IMU	
10/4/1990	TAMPER WITH LOCK	WSP-IMU	
30			
10/3/1990	ASSAULT/NON HOSP	WSP-IMU	
180			
10/10/1990	DANGEROUS INFRA.	WSP-IMU	
10/10/1990	POSS UNAUTH TOOL	WSP-IMU	
30			
10/10/1990	DANGEROUS INFRA.	WSP-IMU	
10/10/1990	THROWING OBJECTS	WSP-IMU	
30			
10/12/1990	DANGEROUS INFRA.	WSP-IMU	
10/12/1990	DESTROY PROPERTY	WSP-IMU	
10/12/1990	POSSESS WEAPON	WSP-IMU	
180			
2/19/1991	ASSAULT/NON HOSP	WSP-IMU	
2/19/1991	POSSESS WEAPON	WSP-IMU	
2/19/1991	THROWING OBJECTS	WSP-IMU	
360			
2/19/1991	ASSAULT/HOSPITAL (AG ASSAULT/INMATE)	WSP-IMU	
2/19/1991	ASSAULT/NON HOSP	WSP-IMU	
2/19/1991	DANGEROUS INFRA.	WSP-IMU	
2/19/1991	STAFF INTERFER.	WSP-IMU	
77			
2/23/1996	POSSESS WEAPON	WSP-IMU	
15			
7/29/2013	REFUSE UA TEST	SCCC	
15			

8/17/2013	REFUSE UA TEST	SCCC	
			30

Total Good Conduct Time (GCT)			
Potential GCT for this Cause	Total GCT Lost to Date	Available GCT	
115		115	

Total Earned Time (ET)			
Potential ET for this Cause	ET Not Earned	Earned Time Earned	Available ET
57.43	0.00	0.00	57.43

Offender Signature Block:

\_\_\_\_\_  
Offender Signature

\_\_\_\_\_  
Date

# Appendix C

**Inmate: STUHR, Clark L (947192)**

Gender: Male	DOB: 02/17/1967	Age: 44	Category: Regular Inmate	Body Status: Active Inmate
RLC: MOD	Wrap-Around: No	Comm. Concern: No	Custody Level: Maximum	Location: WCC-IMU -- IMU / B107
ERD: 05/07/2025	Victim Sensitive: No	CC/CCO: Rishel, Rick L		

**Earned Release Time Credits**

Time Start Date: 09/09/1991	Earned Release Date: 05/07/2025	Days Remaining To ERD: 5061	Current Date: 06/29/2011	Suspension Date: 01/01/2010
-----------------------------	---------------------------------	-----------------------------	--------------------------	-----------------------------

**Good Conduct Time**

Prefix	Cause Number	Consecutive To	Time Start Date	Potential Good Conduct Time	Good Conduct Time Lost	Available Good Conduct Time
AA	881001004					
AB	881001268		03/10/1989	2,832	2,832	0
AC	911001143	AB-881001268	02/03/2024	115	115	0
<b>Combined Values:</b>				<b>2,947</b>	<b>2,947</b>	<b>0</b>

Suspended Good Conduct GCT Available For Time: 0 Days  
 Sanction: 0

**Earned Time**

Prefix	Cause Number	Consecutive To	Time Start Date	ERT %	Potential Earned Time	Earned Time Earned	Earned Time Not Earned	Available Earned Time
AA	881001004							
AB	881001268		03/10/1989	33.33%	1,415.83	689.40	480.93	245.50
AC	911001143	AB-881001268	02/03/2024	33.33%	57.43	0.00	0.00	57.43
<b>Combined Values:</b>				<b>33.33%</b>	<b>1,473.26</b>	<b>689.40</b>	<b>480.93</b>	<b>302.94</b>

**Suspended Sanctions**

Sanction Name	Sanction Status	Quantity Ordered Indicator	Quantity Ordered	Quantity Suspended Indicator	Quantity Suspended	Length Suspended (Days)	Date of Sanction Disposition	Infraction Group Number
There is no data to display.								

*Exhibit "R-1"*

# Appendix D

# OMNI: View J & S - Prison

Washington State  
Department of Corrections

## Offender Management Network Information

Home | Assignments | Offender | Facility | Search | Administration

Home > Offender > Sentence Information > View J & S - Prison

Most Recent

### Sentence Information Menu

- View J & S - Prison
- View J & S - Field
- Conditions
- Earned Time
- Good Conduct Time
- Problem J & S

**Inmate: STUHR, Clark L (947192)**

Gender: Male	DOB:	Age: 47	Category: Regular Inmate	Body Status: Active Inmate
RLC: MOD	Wrap-Around: No	Comm. Concern: No	Custody Level: Minimum 3 - Long Term Minimum	Location: SCCC -- H1 / H1121U
ERD: 06/08/2025				CC/CO: <u>Brulo, Christina B</u>

### View J & S -- Prison

Period of Jurisdiction  
01/06/1989 - Current

Display  
 Include Closed Causes  Enable Scrolling

Sentence Drilldown:  
 Cause, Count, & Confinement Element  
 WEP Eligible Offender : No  
 Felony Firearm Registration : No

Details  
 ERD Calculations  MaxEx Calculations  StatMax Calculations  
 Out Time  Graphical Sentence View

Cause	Count	Confinement Element	Consecutive Confinement	Status	Confinement Length	Time Start Date	ERD	+ Length In Days	- Cause Credits	ERD %	- Potential ET	ET Earned	+ ET Not Earned	Available ET	Potential GCT	90% Credited
<b>Offender Overall</b>																
<input type="radio"/> AG-081001268-Pacific-CP																
		1- Murder 1		Active	0Y, 42M, 0D	03/10/1989	06/08/2025	-	-	-	-	-	-	-	2,032	0
		Base		Active	0Y, 42M, 0D	03/10/1989	04/19/2024	12,935	127	63	33.33%	1,415.83	650.28	765.55	0.00	2,032
				-	0Y, 42M, 0D	03/10/1989	04/19/2024	12,935	127	63	33.33%	1,415.83	650.28	765.55	0.00	2,832
<input type="radio"/> AC-911001143-Walla Walla-CP																
		1- Assault 2	AG-881001268-Pacific-CP	Future	0Y, 17M, 0D	04/19/2024	06/08/2025	517	0	0	33.33%	-	-	-	115	0
		Base		Future	0Y, 17M, 0D	04/19/2024	06/08/2025	517	0	0	33.33%	57.43	0.00	0.00	57.43	115
				-	0Y, 17M, 0D	04/19/2024	06/08/2025	517	0	0	33.33%	57.43	0.00	0.00	57.43	115
<b>Out Time</b>																
		Wickert		-	-			05/03/1993	05/03/1995	-	-	-	-	-	-	-

Maintain:

Action:

ATTACHMENT         

<https://omnisgn.doc.wa.gov/omni/ssta/viewJSPRison.htm>

# Appendix E



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPLICABILITY  
**PRISON/WORK RELEASE/FIELD  
OFFENDER/SPANISH MANUALS**

REVISION DATE  
1/12/15

PAGE NUMBER  
1 of 12

NUMBER  
DOC 350.100

**POLICY**

TITLE

**EARNED RELEASE TIME**

**REVIEW/REVISION HISTORY:**

Effective: 1/4/82 DOC 280.100	Revised: 8/28/06
Revised: 5/1/83 DOC 350.100	Revised: 3/10/08 AB 08-004
Revised: 3/1/86	Revised: 9/24/08
Revised: 8/15/90	Revised: 5/5/09 AB 09-015
Revised: 7/1/96	Revised: 4/29/11
Revised: 10/30/96	Revised: 10/24/11
Revised: 12/1/98	Revised: 7/9/12
Revised: 12/20/00	Revised: 3/9/14
Revised: 3/3/05	Revised: 1/12/15

**SUMMARY OF REVISION/REVIEW:**

Added II.A. on calculation of ERT  
 IV.B.4. - Added that offenders will not be eligible for earned time if serving 20 days or more in one month in segregation/IMS on unfounded/unsubstantiated protection concerns  
 IV.C.3. - Removed requirement to provide Record of Earned Release Time before classification reviews where earned time will be denied  
 Added IV.C.3.a. on providing Earned Time Not Earned report to offenders in Administrative Segregation/maximum custody  
 Added V.C. on jail credit for presentence time served in another jurisdiction on a Washington State charge  
 Section X. - Adjusted process for restoring good conduct time, and added that time will not be restored for 704 infractions committed within the last 5 years

**APPROVED:**

Signature on file

\_\_\_\_\_  
**BERNARD WARNER**, Secretary  
 Department of Corrections

12/22/14  
 \_\_\_\_\_  
 Date Signed

ATTACHMENT B



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPLICABILITY

PRISON/WORK RELEASE/FIELD  
OFFENDER/SPANISH MANUALS

REVISION DATE

1/12/15

PAGE NUMBER

2 of 12

NUMBER

DOC 350.100

## POLICY

TITLE

EARNED RELEASE TIME

### REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 9.92.151; RCW 9.94A; RCW 9.95; RCW 69.50; RCW 69.52; RCW 72.09.130; WAC 137-25-030; WAC 137-30; DOC 320.150 Disciplinary Sanctions; DOC 320.400 Risk and Needs Assessment Process; DOC 460.135 Disciplinary Procedures for Work Release

### POLICY:

- I. The Department will award Earned Release Time (ERT), which includes good conduct time and earned time, to offenders committed to Department facilities within the guidelines established by law.

### DIRECTIVE:

- I. Eligibility

- A. Offenders convicted of a serious violent offense or a Class A felony sex offense may earn ERT as follows:
  1. Offense committed between July 1, 1990, and June 30, 2003 - not to exceed 15 percent of their sentence
  2. Offense committed on or after July 1, 2003 - not to exceed 10 percent of their sentence
- B. Offenders convicted before July 2, 2010, who are classified as Moderate or Low Risk may earn ERT not to exceed 50 percent of their sentence regardless of the date of offense or sentencing, provided they are not convicted of or have a prior:
  1. Sex offense,
  2. Violent offense,
  3. Crime against a person, including Identity Theft 1 and 2 committed on or after June 7, 2006,
  4. Felony domestic violence,
  5. Residential burglary,
  6. Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacturing or delivering methamphetamine, or by possessing methamphetamine with intent to manufacture or deliver,

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p><b>POLICY</b></p>	APPLICABILITY <b>PRISON/WORK RELEASE/FIELD OFFENDER/SPANISH MANUALS</b>		
	REVISION DATE 1/12/15	PAGE NUMBER 3 of 12	NUMBER DOC 350.100
	TITLE <b>EARNED RELEASE TIME</b>		

7. Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (i.e., delivery of a controlled substance to a minor),
  8. Gross misdemeanor stalking,
  9. Domestic violence court order violation, including gross misdemeanors, or
  10. Any new felony committed under community supervision.
- C. Offenders may earn ERT not to exceed 33<sup>1</sup>/<sub>3</sub> percent of their sentence in all other cases not identified in this section.
- D. Offenders found guilty of violation 557 or 810 will lose their 50 percent eligibility and all available ERT and privileges as outlined by DOC 320.150 Disciplinary Sanctions and DOC 460.135 Disciplinary Procedures for Work Release. Offenders found guilty of an 813 violation related to employment or programming while in Work Release will lose all available ERT and privileges.
1. The Disciplinary Hearing Officer will notify the Correctional Records Supervisor (CRS) of all guilty findings for 557 and 810 violations.
  2. The Community Hearing Officer will notify the Records Office at the sending facility if the violation(s) is incurred in Work Release or a facility transfers the offender before the hearing is completed. The Records Office at the sending facility will revise DOC 02-329 50% Earned Release Time Eligibility Change Notice.
- II. Requirements
- A. ERT will be calculated at two-thirds good conduct time and one-third earned time.
  - B. 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, can lose ERT associated with the previous sentence or cause. ERT can be taken on a consecutive sentence not yet being served.
- III. Good Conduct Time
- A. All offenders will be eligible for good conduct time, except:
    1. Offenders sentenced to death or Life Without Parole,
    2. Offenders serving the mandatory or flat time enhancement portion of their sentences,



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPLICABILITY

**PRISON/WORK RELEASE/FIELD  
OFFENDER/SPANISH MANUALS**

REVISION DATE  
1/12/15

PAGE NUMBER  
4 of 12

NUMBER  
DOC 350.100

## POLICY

TITLE

**EARNED RELEASE TIME**

3. Community Custody Violators sanctioned by the Department on or after May 2, 2012,
  4. Offenders sanctioned to Community Custody Prison (CCP) Return or Community Custody Inmate (CCI) Termination, and
  5. Indeterminate offenders whose minimum term has expired and who have not been paroled or transferred to a consecutive sentence. Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.
- B. Offenders may lose good conduct time, as follows:
1. Offenders found guilty of a serious violation may be sanctioned to a loss of earned or future good conduct time per DOC 320.150 Disciplinary Sanctions and DOC 460.135 Disciplinary Procedures for Work Release.
    - a. The amount of time lost will be determined by the Disciplinary or Community Hearing Officer or Indeterminate Sentence Review Board (ISRB). The following offenders may lose good conduct time if found guilty of a serious violation:
      - 1) Indeterminate offenders whose time has not been adopted by the ISRB.
      - 2) Determinate offenders.
  2. Offenders serving the mandatory or flat time enhancement 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 or flat time enhancement period is served.
  3. Offenders may lose good conduct time for committing a violation or being infracted while out to court.
- C. When all of an indeterminate offender's available good conduct time has been denied due to violations, the Superintendent/Community Corrections Supervisor (CCS) may request, via the Headquarters Community Screening Committee, that the ISRB schedule a disciplinary hearing to address the offender's time structure.
- D. When an offender paroled from an indeterminate sentence to a consecutive determinate sentence commits a violation, 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.



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPLICABILITY

**PRISON/WORK RELEASE/FIELD  
OFFENDER/SPANISH MANUALS**

REVISION DATE  
1/12/15

PAGE NUMBER  
5 of 12

NUMBER  
DOC 350.100

## POLICY

TITLE

**EARNED RELEASE TIME**

### IV. Earned Time

- A. 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<sup>1</sup>/<sub>3</sub> percent rule 5.00 days
  4. Earned time eligible under 50 percent rule 10.00 days
- B. An offender will not be eligible for earned time if:
1. Serving an indeterminate sentence, and the ISRB has:
    - a. Extended the cause to the maximum term, or
    - b. Previously denied future earned time.
  2. S/he is not involved in mandatory programming as determined through the classification process and consistent with his/her Custody Facility Plan. This includes refusing a mandatory programming or being terminated from a program assignment for documented negative or substandard performance. An offender who is on a waiting list and then refuses a program assignment will not earn earned time for the month in which s/he refused.
    - a. Offenders previously determined qualified to receive 50 percent earned time will participate in programming or activities targeted in the Custody Facility Plan. Offenders will not be penalized if programs and activities are not available.
  3. S/he refuses any transfer, excluding Work Release. Earned time will not be earned for any calendar month the offender refuses assignment.
  4. S/he serves 20 days or more in one calendar month in Administrative Segregation, disciplinary segregation, or Intensive Management Status (IMS) for negative behavior or unfounded/unsubstantiated protection concerns.
    - a. The offender is eligible to begin earning earned time when authorized to transfer or return to general population.
    - b. Offenders who are approved for transfer to general population and are scheduled for release to the community within 60 days will earn earned time unless found guilty of a(n):



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPLICABILITY

**PRISON/WORK RELEASE/FIELD  
OFFENDER/SPANISH MANUALS**

REVISION DATE

1/12/15

PAGE NUMBER

6 of 12

NUMBER

DOC 350.100

## POLICY

TITLE

**EARNED RELEASE TIME**

- 1) 557 or 810 violation, or
  - 2) 813 violation related to employment or programming while in Work Release.
- c. An offender on IMS, or in Administrative Segregation or disciplinary segregation for negative behavior, will not earn earned time while on out to court status. Any earned time not earned will be addressed at a classification review upon return.
5. S/he is serving the mandatory or flat time enhancement portion of his/her sentence, except for indeterminate offenders sentenced for crimes committed before July 1, 1984. The offender's electronic file will be updated to record the behavior.
- C. The offender's electronic file is the official record for his/her earned time.
1. The first entry on the Earned Time screen will be the time start date. Dates for all subsequent entries will reflect the first of the month following any month being updated.
  2. The Counselor/CCO will review and update earned time on the Earned Time screen in the offender's electronic file:
    - a. At annual review,
    - b. At transfer from Segregation to another facility, and
    - c. For any month earned time is not earned.
  3. The offender will receive a copy of the Earned Time Not Earned report listing all earned time denials. The Counselor/CCO will have the offender sign a copy of the report. A copy of the signed report will be maintained in the offender's central file and electronic imaging file.
    - a. Offenders in Administrative Segregation/maximum custody will receive the report every 30 days if earned time is denied during that time.
  4. The CRS will update the earned time on the Earned Time screen in the offender's electronic file at:
    - a. The request of the ISRB,
    - b. Transfer from general population to another facility, and
    - c. Release.
- D. Denials of earned time are final and cannot be appealed.



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPLICABILITY

**PRISON/WORK RELEASE/FIELD  
OFFENDER/SPANISH MANUALS**

REVISION DATE  
1/12/15

PAGE NUMBER  
7 of 12

NUMBER  
DOC 350.100

## **POLICY**

TITLE

**EARNED RELEASE TIME**

### V. County Jail Earned Release Time

- A. For offenders transferred to the Department from a county jail, the jail administrator will certify to the Department the amount of jail time spent in custody and any earned time not earned. The Department will calculate ERT for time spent in the jail at the rate earned in the Department.
1. If no certification is provided, the CRS/designee will forward a request to the jail administrator using DOC 02-387 Jail Time Certification.
  2. If the Department becomes aware that the time certified by the jail is incorrect, the CRS will contact the jail to verify, but does not need to wait for verification to apply the proper credits.
- B. Jail time ordered by the court for the same period on consecutive sentences will be applied as follows:
1. If the sentences have the same Prison intake date, jail time credits will be applied per the Judgment and Sentence, but no jail good conduct time will be applied for the overlapping time period. The Department may contest the court's calculations through the post-sentence petition process.
  2. If the Prison intake dates are different, the CRS will apply the time from the Judgment and Sentence or jail certification, including jail good conduct time, and then apply 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.
- C. Offenders serving presentence time in another jurisdiction (e.g., juvenile detention center, another state/jurisdiction even if fighting extradition; etc.) will receive jail credit if serving solely on the Washington State charge. The Department will request documentation from the other jurisdiction of dates of incarceration and any early release time lost. The Department will calculate ERT for the presentence time spent in the facility at the rate earned in the Department.

### VI. Re-sentenced on Previous Conviction - Credit Time Served

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

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p><b>POLICY</b></p>	APPLICABILITY <b>PRISON/WORK RELEASE/FIELD OFFENDER/SPANISH MANUALS</b>		
	REVISION DATE 1/12/15	PAGE NUMBER 8 of 12	NUMBER <b>DOC 350.100</b>
	TITLE <b>EARNED RELEASE TIME</b>		

VII. Persistent Prison Misbehavior

- A. An offender serving a sentence for an offense committed on or after August 1, 1995:
1. May have earned time credits taken away as part of a disciplinary sanction if s/he has lost all good conduct time credits for the current commitment.
  2. May have earned or future ERT credits reduced.

VIII. Release Date

- A. Jail time and jail ERT will be deducted from the total sentence to calculate an offender's release date on a determinate sentence.
1. ERT applicable per statute is applied to the adjusted sentence.
- B. A determinate offender held beyond his/her Earned Release Date (ERD) may have available good conduct time taken if found guilty of a serious violation.
- C. An offender with an established release date who receives a Category A violation after an Offender Release Plan has been approved will have the release date suspended until the violation is adjudicated and all time loss and sanctions are completed.
- D. If the offender is denied earned time, loses good conduct time, or has time restored and is within 120 days to ERD, employees/contract staff responsible for entering the sanction information will notify the Counselor/CCO/CRS immediately by telephone and/or email.

IX. Superintendent/CCS Review

- A. ERT will be reviewed by the Superintendent/CCS at intervals not to exceed one year.
1. At the time of his/her annual review, each offender will receive a written record of the ERT s/he is eligible to earn.
  2. For indeterminate pre-1984 offenders, review is final when adopted by the ISRB, at:
    - a. The .100 hearing, based on the Parole Eligibility Release Date and the current ERT recorded in the offender's electronic file.



 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p><b>POLICY</b></p>	APPLICABILITY <b>PRISON/WORK RELEASE/FIELD OFFENDER/SPANISH MANUALS</b>		
	REVISION DATE 1/12/15	PAGE NUMBER 10 of 12	NUMBER DOC 350.100
	TITLE <b>EARNED RELEASE TIME</b>		

- a. Plans including restoration of good conduct time lost for any Category A infraction(s) also require approval from the Assistant Secretary for Prisons or the appropriate Deputy Directory.
3. When deciding whether to approve the restoration plan, the FRMT/multidisciplinary FRMT/Superintendent/Deputy Director/Assistant Secretary will consider:
    - a. If the amount of time being restored correlates with the plan length and amount/type of required programming,
    - b. Whether the offender can reasonably be expected to fulfill the plan requirements,
    - c. Length and type of prior and proposed program participation,
    - d. Period of infraction free behavior,
    - e. Nature of infractions and current Prison Sanctioning Guidelines, attached to DOC 320.150 Disciplinary Sanctions,
    - f. Overall behavior during the commitment period,
    - g. FRMT/multidisciplinary FRMT recommendation, and
    - h. Compliance with the Custody Facility Plan.
  - C. At each subsequent classification review, the Counselor and offender will review the restoration plan and the offender's progress, and make any necessary adjustments for FRMT/multidisciplinary FRMT review and Superintendent/designee approval.
  - D. If the offender adheres to his/her Custody Facility Plan and remains serious infraction free for the duration of the restoration plan, the lost good conduct time will be restored as outlined in the plan. The Counselor will forward a copy of the Custody Facility Plan and any associated documents (e.g., infraction reports, and the offender's Criminal Conviction Record) to the Superintendent.
    1. To restore the lost time, the Superintendent will complete DOC 21-730 Restoration of Good Conduct Time and forward it to the Deputy Director/Assistant Secretary for Prisons, if necessary.
    2. Any denial of restoration requires Superintendent/Deputy Director/Assistant Secretary approval, as applicable, and will only be considered

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS  <b>POLICY</b>	APPLICABILITY <b>PRISON/WORK RELEASE/FIELD          OFFENDER/SPANISH MANUALS</b>		
	REVISION DATE 1/12/15	PAGE NUMBER 11 of 12	NUMBER <b>DOC 350.100</b>
	TITLE <b>EARNED RELEASE TIME</b>		

when a significant, compelling reason(s) exists. The decision and reason(s) will be documented in the Custody Facility Plan.

- E. Designated employees will document restoration in the Decision, Sanction, or Appeal Result narrative on the Infraction Summary screen in the offender's electronic file.
  - F. The restoration decision is final and cannot be appealed.
- XI. Community Custody
- A. Community Custody Violators sanctioned by the Department before May 2, 2012, are eligible for good conduct time at a rate of 33<sup>1</sup>/<sub>3</sub> percent. Offenders sanctioned on or after May 2, 2012, will not be eligible for good conduct time. Hearing Officers may adjust to avoid release on a weekend or holiday.
  - B. If an offender has not completed his/her maximum term of total confinement and is found to have committed the violation, the Department may return the offender to Prison to serve the remainder of the Prison term.
    - 1. All jail ERT and Department ERT applied to the sentence before early release becomes return time.
    - 2. When determining the length of return time, the Department must credit the offender for all community custody time successfully served and with all periods of pre-hearing time spent in confinement pending all prior and current community custody violation hearings for that cause.
    - 3. The offender is not entitled to any good conduct time during the return time.
    - 4. Upon release from Prison after serving the remainder of the Prison term, the offender will resume serving the community custody portion of the sentence for any time remaining to serve on community custody.

**DEFINITIONS:**

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

**ATTACHMENTS:**

None



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPLICABILITY  
**PRISON/WORK RELEASE/FIELD  
OFFENDER/SPANISH MANUALS**

REVISION DATE  
1/12/15

PAGE NUMBER  
12 of 12

NUMBER  
**DOC 350.100**

**POLICY**

TITLE

**EARNED RELEASE TIME**

**DOC FORMS:**

DOC 02-329 50% Earned Release Time Eligibility Change Notice

DOC 02-387 Jail Time Certification

DOC 09-261 Court of Appeals Decision - Jail Time Credits

DOC 21-730 Restoration of Good Conduct Time

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re Personal Restraint Petition of: )

CLARK STUHR, )

Petitioner. )

NO. 91920-8

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 22<sup>ND</sup> DAY OF FEBRUARY 2016, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] CLARK STUHR  
DOC NO. 947192  
WASHINGTON CORRECTIONS CENTER  
P.O. BOX 900  
SHELTON, WA 98584

**SIGNED** IN SEATTLE WASHINGTON, THIS 22<sup>ND</sup> DAY OF FEBRUARY 2016.

x Patrick Mayovsky

## OFFICE RECEPTIONIST, CLERK

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**To:** Patrick Mayovsky  
**Cc:** correader@atg.wa.gov; cassiev@atg.wa.gov; alanc@atg.wa.gov  
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**Subject:** In re Personal Restraint Petition of Clark Stuhr, No. 91920-8 / Supplemental Brief of Petitioner

Attached for filing today is a supplemental brief of petitioner for the case referenced below.

In re the Personal Restraint Petition of Clark Stuhr

No. 91920-8

Filed By:  
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