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SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of

CLARK L. STUHR,

Petitioner.

**SUPPLEMENTAL BRIEF OF THE WASHINGTON STATE
DEPARTMENT OF CORRECTIONS**

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I. INTRODUCTION

Clark Stuhr is an inmate who lost most of his “good conduct time” because of serious, repeated misconduct. Starting from the false assumption that good conduct time is awarded daily or monthly throughout his sentence, he claims that the loss of “future” good conduct time violates his right to due process. That claim fails because he was not deprived of any protected liberty interest; an inmate has no liberty interest in “good-time credit for satisfactory behavior while in prison.” *In re Pullman*, 167 Wn.2d 205, 212, 218 P.3d 913 (2009).

He also claims the Department of Corrections’ policy allowing the loss of “future” good conduct time for misconduct violates RCW 9.94A.729(1)(a). But the language upon which he relies merely prohibits “earned release credits” from being awarded to an inmate before he earns them—it sets no limit on the Department’s broad discretion to develop and adopt a system that allows for the loss of earned release time for misconduct.

Stuhr’s personal restraint petition should be dismissed.

II. STATEMENT OF THE CASE

In 1989, Stuhr was convicted of first degree murder and second degree burglary in Pacific County. App. C.¹ He was sentenced to concurrent sentences of 425 months total confinement on the murder conviction and 24 months total confinement on the burglary conviction. *Id.* In 1991, he was convicted of second degree assault in Walla Walla County and sentenced to 17 months total confinement. *Id.* The Pacific County and Walla Walla County sentences are to be served consecutively. *Id.* Stuhr also was sentenced to terms of community placement for the murder and assault convictions. *Id.*

As a result of his murder and assault convictions and the corresponding sentence to community placement following confinement, Stuhr is not entitled to outright release on his “earned early release date.” *In re Mattson*, 166 Wn.2d 730, 739, 214 P.3d 141 (2009). Instead, on that date he becomes eligible only for transfer to community custody in

¹ For the Court’s convenience, exhibits attached to the Court of Appeals briefs are included as appendices to this brief:

- Appendix A is a “Record of Earned Release Time,” dated Feb. 11, 2014, which was attached to Stuhr’s opening brief in the Court of Appeals.
- Appendix B is the Declaration of Cherrie Melby, dated Mar. 2, 2015, which was attached to the Department’s response brief in the Court of Appeals.
- Appendix C is an excerpt of the “OMNI Legal Face Sheet” for Clark Stuhr, which was attached to the Melby declaration.
- Appendix D is a copy of “DOC Policy 350.100, Earned Release Time,” dated Jan. 12, 2015, which was attached to the Melby declaration.
- Appendix E is the “OMNI Judgment and Sentence View” for Clark Stuhr, dated Jan. 27, 2015, which was attached to the Melby declaration.

lieu of earned early release. *Id.*; RCW 9.94A.729(5); RCW 9.94B.050; RCW 9.94B.090.

The *earned early release date*² is calculated using two forms of early release credits. The credits are *good conduct time* (sometimes referred to as *good time*) that rewards the inmate's good behavior, and *earned time* that rewards his good performance in prison programs such as education or a prison job. *In re Forbis*, 150 Wn.2d 91, 98, 74 P.3d 1189 (2003); RCW 9.94A.729(1)(a) ("The earned release time shall be for good behavior and good performance"); RCW 72.09.130 (indicating the system will consist of credits for good conduct and good performance). "[G]ood [conduct] time' is calculated at the beginning of the sentence and will be lost only if an inmate does not follow prison rules and regulations." *In re Forbis*, 150 Wn.2d at 98. *Earned time* is awarded monthly based upon the inmate's successful participation in assigned programming (such as work or education). *Id.* The inmate will not earn the *earned time* if the inmate fails to successfully participate in the assignment. *Id.*

Based on the crimes for which he was sentenced, Stuhr is eligible to receive *earned release time* of up to 33 1/3 percent of his

² For clarity, four terms of art are italicized when used in the remainder of this brief: *earned early release date*, *earned release time*, *good conduct time*, and *earned time*.

sentence. RCW 9.94A.729(3)(e).³ Under the Department's *earned release time* system, one third of the *earned release time* is *earned time*, and Stuhr is eligible to earn five days of *earned time* each calendar month. WAC 137-30-030(3)(a)(iii); DOC Policy 350.100 Directive II.A and IV.A.3. The other two-thirds of the *earned release time* is the *good conduct time* that may be lost if Stuhr engages in prison misbehavior during the course of his confinement.

For his convictions in Pacific County in 1989, the Department calculated that Stuhr was eligible for 2,832 days of potential *good conduct time*.⁴ For his conviction in Walla Walla County in 1991, his potential *good conduct time* was calculated as 115 days.⁵

Stuhr has engaged in repeated and serious misconduct while in prison, include assaulting and throwing objects at Department staff, possessing weapons, threatening other inmates, destroying property, and

³ Stuhr's available potential "*earned release time*" percentage is shown in the column "ERT %" in Appendix E.

⁴ See App. A at 6; App. E (column "Potential GCT"). Only "*good conduct time*" is at issue in this case, since no "*earned time*" has been taken from Stuhr for misconduct. The Department also calculated that Stuhr would be eligible for 1,415.83 days of "*earned time*" for his Pacific County convictions (App. A at 6; App. E (column "Potential ET")), but "*earned time*" has been unavailable to him multiple times during his confinement because of his misconduct. See App. A at 1-3.

⁵ See App. A at 12; App. E (column "Potential GCT"). His total available "*earned time*" for his Walla Walla County conviction is 57.43 days. App. A at 12; App. E (column "Potential ET").

tampering with locks. App. A. Because of his misconduct, by January 2015, he had lost all 2,832 days of the *good conduct time* available for his Pacific County sentence and 70 days out of the 115 days of *good conduct time* available for his Walla Walla County sentence. App. E (column “GCT Lost”).

Stuhr filed this personal restraint petition in the Court of Appeals alleging that the Department of Corrections violated his due process rights by taking “good time credits” from him before he had earned them and by taking “good time credits” from a sentence he had not yet begun to serve.⁶ In his reply brief he also argued that the Department’s policy conflicts with RCW 9.94A.729(1)(a). He has not challenged any of his underlying prison infractions.

The Court of Appeals dismissed his petition, holding that the Department acted according to its adopted policies and regulations and within its statutory authority. It did not address his constitutional argument. This Court granted Stuhr’s motion for discretionary review, appointed counsel, and ordered supplemental briefing.

⁶ According to the documentation Stuhr submitted with his Petition in the Court of Appeals, Stuhr had not lost any “*good conduct time*” from his Walla Walla County sentence. As such, at the time of filing of Stuhr’s petition, all of his “*good conduct time*” from the Walla Walla County sentence was potentially available. *See* App. A at 12.

III. ISSUES PRESENTED

1. Is an inmate denied due process when he loses *good conduct time* in response to his misconduct, under regulations and policies adopted and followed by the Department of Corrections?

2. Do provisions in the Department's *Earned Release Time* policy that provide for the loss of *good conduct time* in response to an inmate's misconduct conflict with RCW 9.94A.729(1)(a)?

IV. ARGUMENT

A. The "Earned Release Time" System in Washington

Like the federal government and approximately half the states, the Washington Legislature has elected to offer "earned release time" credit to inmates in state prisons and correctional facilities. RCW 9.94A.729(1); RCW 72.09.130. Generically, *earned release time* is a reduction in the actual portion of a sentence that will be served. The Legislature has specified only the maximum *earned release time* that may be made available to an inmate depending on the crime or crimes for which the inmate was sentenced (RCW 9.94A.729(3)) and has delegated to the Department of Corrections the responsibility to design and implement a system for awarding *earned release time* to inmates under its custody. RCW 9.94A.729(1)(a); RCW 72.09.130. The Legislature has given the Department "broad discretion to determine and enforce the procedures by

which an offender will be allowed to earn a reduction in his sentence.” *In re Pullman*, 167 Wn.2d at 214.

The Department designed a system that divides *earned release time* into two parts: *earned time* and *good conduct time*. WAC 137-30; DOC Policy 350.100.⁷ Under the Department’s system, *earned time* comprises one-third of the *earned release time* available to a prisoner, and *good conduct time* comprises the other two-thirds of the *earned release time*. *In re Forbis*, 150 Wn.2d at 98; WAC 137-30-020; DOC Policy 350.100 Directive II.A.

Earned time rewards an inmate for his⁸ participation in prison programs and industries and must be earned through affirmative participation in those activities. RCW 72.09.130; WAC 137-30-020; DOC Policy 350.100 Directive IV. An inmate thus has zero *earned time* when he arrives into Department custody, but he has the opportunity to accumulate *earned time* through his participation in prison programming. Where the prisoner is statutorily eligible to receive 33 1/3 percent of *earned release time*, the prisoner can earn up to five days of *earned time* each month. DOC Policy 350.100 Directive IV.A. An inmate cannot earn *earned time* if he refuses to participate in, or fails to successfully

⁷ A copy of DOC Policy 350.100 is attached as Appendix D.

⁸ Because Stuhr is male, this brief uses the masculine pronoun when referring to inmates.

complete, assigned programs. DOC Policy 350.100 Directive IV.B. A prisoner must earn the *earned time* each month, or the *earned time* cannot be awarded. In other words, *earned time* not earned in prior months cannot be retroactively “restored” in future months. *Id.* Directive X.

In contrast to *earned time*, which starts at zero and must be earned monthly during confinement, the full amount of *good conduct time* is potentially available to the inmate when he is transferred to the custody of the Department. *In re Forbis*, 150 Wn.2d at 98; DOC Policy 350.100 Directive III.A. The inmate may lose some or all of that *good conduct time* if he, like Stuhr, fails to comply with prison rules and regulations while in custody. *In re Forbis*, 150 Wn.2d at 98; DOC Policy 350.100 Directive III.B. *Good conduct time* that has been lost can be restored under specified circumstances. WAC 137-30-070; DOC Policy 350.100 Directive X.

Because the inmate might not earn all possible *earned time* and might lose *good conduct time* during confinement, the prisoner’s actual *earned early release date* cannot be conclusively determined when a prisoner first enters the prison system. Instead, the Department calculates a potential *earned early release date* based upon the assumption that the prisoner will not lose any available *good conduct time* and will earn all potential *earned time*. The actual *earned early release date* is adjusted

during the course of confinement if the prisoner loses *good conduct time* or fails to earn *earned time*.

As an example, consider an inmate sentenced to 99 months for a crime for which he is statutorily eligible for 33 1/3 percent *earned release time* (33 months in this example) under RCW 9.94A.729(3). If he were to receive all the *earned release time* for which he is eligible, he could be released from confinement after only 66 months (99 months – 33 months = 66 months). But the actual *earned early release date* cannot be definitively determined at the outset because it is contingent on the inmate's future behavior.

Instead, when an inmate enters Department custody, his *earned early release date* will be calculated based upon his available *good conduct time*, based on the assumption that the inmate retains it all. Since his *good conduct time* comprises two-thirds of his potential *earned release time* (i.e., two-thirds of 33 months, or 22 months) (*see In re Forbis*, 150 Wn.2d at 98; WAC 137-30-020; DOC Policy 350.100 Directive II.A.), his *earned early release date* is calculated initially at 77 months (i.e., 99 months – 22 months = 77 months). If he loses *good conduct time* because of misconduct, his *earned early release date* will be delayed, requiring him to serve more—or potentially all—of his sentence in confinement. *See In re Forbis*, 150 Wn.2d at 98; DOC Policy 350.100 Directive III.B.

Separate from *good conduct time*, the inmate in this hypothetical could receive *earned time* of up to one-third of the statutory *earned release time*. *In re Forbis*, 150 Wn.2d at 98; WAC 137-30-020; DOC Policy 350.100 Directive II.A. Because *earned time* must be earned by affirmatively participating in prison programs over the period of incarceration, it does not exist until that participation actually occurs. DOC Policy 350.100 Directive IV. Each month, as the inmate earns *earned time*, his *earned early release date* would be advanced accordingly until he reaches the maximum *earned time* available: 11 months in this example (i.e., one-third of the potential *earned release time*—i.e., one-third of 33 months). *Id.*

The *earned early release date* thus is calculated by subtracting from the end date of the inmate's sentence the amount of *good conduct time* remaining and the amount of *earned time* accumulated. DOC Policy 350.100 Directive VIII. The *earned early release date* changes over time when *good conduct time* is lost (or restored) and when *earned time* is earned, and thus is not finally determined and credited until the day the inmate is released from confinement.

B. Stuhr Was Not Denied Due Process Because He Was Not Deprived of a Protected Liberty Interest

“The threshold question in every due process challenge is whether the challenger has been deprived of a protected interest in life, liberty, or property.” *In re Pullman*, 167 Wn.2d at 211-12. In *Pullman*, an inmate claimed that he was deprived of a liberty interest without due process when the maximum *earned release time* available to him was reduced. This Court held that he had no liberty interest in receiving “good-time credit for satisfactory behavior while in prison.” *Id.* at 212 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 557, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)). And while a statute can create a liberty interest, it does so only if it contains “substantive predicates” and “specific directives” that so limit the Department’s discretion as to mandate a particular outcome if the “substantive predicates” are present. *Id.* (quoting *In re Cashaw*, 123 Wn.2d 138, 144, 866 P.2d 8 (1994)). “[P]rocedural statutes that merely structure the exercise of discretion can create only the expectation that an agency will follow its own procedures.” *Id.* at 213 (quoting *Cashaw*, 123 Wn.2d at 146) (internal quotation marks omitted).

This Court has at least twice decided that Washington’s statutes governing *earned release time* do not create a liberty interest in either *good conduct time* or *earned time*. See *In re Pullman*, 167 Wn.2d at

213-18; *In re Mattson*, 166 Wn.2d at 737-41. Washington's statutes do not contain the substantive predicates necessary to provide a state-created liberty interest. *Mattson*, 166 Wn.2d at 737-41; *see also In re Galvez*, 79 Wn. App. 655, 657-58, 904 P.2d 790 (1995) (neither RCW 72.09.130 nor former RCW 9.94A.150(1) [language now codified at RCW .94A.729(1)] creates a liberty interest in earning *earned release time*). Because the statutes do not create a liberty interest, Stuhr cannot show that the loss of "good time" (i.e., *good conduct time*) violated a right to due process. *Id.* At most, the statutes give Stuhr the right to have the Department follow its own rules in determining his *earned early release date*. *Mattson*, 166 Wn.2d at 741. Stuhr does not argue or make any attempted showing that the Department has violated its rules or policies governing *earned release time*.

Even if Stuhr had a liberty interest in his *good conduct time*, there was no due process violation because he received any process due to him. Stuhr refers to a "right to good time credits" which cannot be deprived without some "minimal due process." Mot. Discr. Rev. at 7-8. But he is not challenging any of his underlying prison infractions and he has not alleged any inadequacy of due process in any disciplinary action.⁹

⁹ "Minimum due process" in a prison disciplinary action means the inmate must "(1) receive notice of the alleged violation; (2) be provided an opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional

Stuhr has not been deprived of any liberty interest. His constitutional claim fails.

C. DOC Policy 350.100 Is Consistent with RCW 9.94A.729(1)(a)

RCW 9.94A.729(1)(a) provides the Department with broad discretion to establish procedures for implementing *earned release time*:

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.

Stuhr relies on the last sentence for his argument that DOC Policy 350.100 impermissibly permits the Department to take “good-time credit” before it is earned.¹⁰ The Court of Appeals rejected his argument, holding that the statutory language “simply prohibits the Department from crediting an

safety and correctional goals; and (3) receive a written statement of the evidence relied upon and the reasons for the disciplinary action.” *In re Gronquist*, 138 Wn.2d 388, 396-97, 978 P.2d 1083 (1999). Stuhr does not allege that he was deprived of minimum due process in any prison disciplinary action.

¹⁰ The last sentence in RCW 9.94A.729(1)(a) first appeared in Laws of 1990, ch. 3, § 202 (amending former RCW 9.94A.150(1)). In 2000, the term “early release credits” was replaced by “earned release credits.” Laws of 2000, ch. 28, § 28. The language was transferred without substantive change to former RCW 9.94.728(1) in 2002 (Laws of 2002, ch. 50, § 2), and finally to RCW 9.94A.729(1)(a) in 2009 (Laws of 2009, ch. 455, §§ 1, 3). Laws of 2007, ch. 483, § 304. We have found no legislative history suggesting that the language in that sentence was intended to affect the loss of *good conduct time* in response to an inmate’s misconduct.

inmate with early release time that he has not yet earned” and “does not prohibit the Department from sanctioning petitioner by removing his ability to earn credits in the future.” Slip op. at 2.¹¹

The statute mandates that *earned release time* cannot be awarded in advance. But an inmate is not awarded *good conduct time* (and therefore the entirety of his *earned release time*) until he has complied with prison rules and regulations satisfactorily to be released on his *earned early release date*. Even though an inmate enters Department custody under a presumption that all potential *good conduct time* is available, an inmate must serve his sentence without misconduct in order to actually receive any *earned release time* for good conduct. See *In re Forbis*, 150 Wn.2d at 98. But an inmate may lose the *opportunity* to receive some or all *earned release credits* in the future because of his misconduct in the present, as the Court of Appeals correctly held here. WAC 137-30-030(2)(b) explicitly provides that “[o]ffenders 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.” That provision is implemented in DOC Policy 350.100 Directive III.B, and it is within the broad discretion RCW 9.94A.729(1)(a) grants to the Department.

¹¹ A copy of the slip opinion is attached to the motion for discretionary review.

The Department keeps an accounting of *good conduct time*, including that which has been lost because of misconduct, and provides updates to inmates yearly and at other times. DOC Policy 350.100 Directive IX. But the amount of *good conduct time* actually received by an inmate is not final and not actually awarded until the time of release (or transfer to a consecutive determinate sentence, for an inmate like Stuhr who received consecutive determinate sentences). WAC 137-30-060; DOC Policy 350.100 Directive IX. Even after a release date is set, an offender's release may be delayed if he has a pending infraction because a loss of *good conduct time* may still be sanctioned. *Id.*

Stuhr argues for reliance on *State ex rel. Bailey v. West Virginia Division of Corrections*, 213 W. Va. 563, 584 S.E.2d 197 (2003), as authority for interpreting RCW 9.94A.729(1)(a). But the West Virginia statute challenged in *Bailey* “granted one day good time for each day [the inmate] is incarcerated.” *Bailey*, 213 W. Va. at 568 (quoting W. Va. Code § 28-5-27(c) (1984)). That direct day-by-day correspondence is in stark contrast with RCW 9.94A.729, which merely sets the maximum *earned release time* as a percentage of the entire sentence, not a daily calculation. Under RCW 9.94A.729(3)(e), the maximum aggregate *earned release time* Stuhr may receive is one-third of his total sentence. *In re Williams*, 121 Wn.2d 655, 659, 853 P.2d 444 (1993) (“good time” is calculated

based upon a percentage of the sentence imposed, not a percentage of the time served).¹²

The court in *Bailey* cited another provision in the West Virginia statute as confirming that it grants good time daily. That provision states that an inmate who commits a prison infraction may have “any part or all of the good time *which has been granted to such inmate* pursuant to this section” forfeited or revoked. *Bailey*, 213 W. Va. at 568 (quoting W. Va. Code § 28-5-27(f) (1984)). Relying on that explicit language, the West Virginia court held that the inmate could lose only the days already granted to him. *Id.* at 569. Again, no similar language is present in RCW 9.94A.729, which precludes *earned release time* from being awarded in advance, but which is silent about how or when it can be taken away—leaving the design of the *earned release time* system to the Department’s broad discretion. And here, the system the Department has established provides that the amount of *good conduct time* actually received by an inmate is not final and actually awarded until the time of release. WAC 137-30-060; DOC Policy 350.100 Directive IX.A.2.

¹² In *Williams*, the Court used the term “good time” to refer to “earned release time.” See *In re Cromeenes*, 72 Wn. App. 353, 356 n.3, 864 P.2d 423 (1993).

Finally, Stuhr argues that inmates who lose future *good conduct time* will have little incentive to comply with prison rules. Putting aside other incentives (and sanctions) available to the Department, the Department's regulations and policies both provide avenues for restoration of lost *good conduct time*. WAC 137-30-070; DOC Policy 350-100 Directive X. An inmate who formerly misbehaved but now seeks to comply with prison rules and requirements may find substantial incentive through the opportunity to restore lost *good conduct time*. Moreover, even after *good conduct time* is lost, the possibility to earn *earned time* through participation in programming incentivizes inmate compliance with Department regulations and policies.

The Legislature granted the Department broad authority and discretion to develop a system to implement *earned release time*. The last sentence of RCW 9.94A.729(1)(a) does not unambiguously preclude the Department from taking future *good time conduct* as a sanction for present inmate misconduct. The more plausible interpretation is that given by the Court of Appeals: RCW 9.94A.729(1)(a) precludes the Department only from *awarding* either *good conduct time* or *earned time* before it is earned. This Court should affirm that interpretation.

V. CONCLUSION

Clark Stuhr cannot demonstrate a due process violation because he has not been deprived of any liberty interest. The Department's regulations and policies implementing an *earned release time* system are well within the broad discretion granted by statute and not in conflict with RCW 9.94A.729(1)(a). The personal restraint petition should be denied.

RESPECTFULLY SUBMITTED this 22nd day of February 2016.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that I served, via electronic mail, a true and correct copy of the foregoing document, upon the following:

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DATED this 22nd day of February 2016, at Olympia, Washington.



Wendy R. Scharber
Legal Assistant

APPENDICES

APPENDIX A

**“Record of Release Time”
Dated Feb. 11, 2014**

**Originally attached to Opening Brief of Petitioner
in the Court of Appeals**

Record of Earned Release Time

Date: 2/11/2014

Offender Name:

Doc No.:

Assigned Staff Name:

STUHR, Clark L

947192

Zavadny, 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 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	MCC-IMU (closed)	10.17
8/1/2009	8/1/2009	Not Earned	Segregation	WSP-IMU	10.17

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-Maln	15.33
3/1/2009	6/1/2009	Earned		WSP-IMU	15.33
5/2/1993	9/1/1996	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
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-Maln	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-Maln	72.66

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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		
6/11/1989	ASSAULT/NON HOSP	WSP-Maln			
6/11/1989	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			
					180
10/6/1989	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			
					30
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			

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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	
			180
8/22/1990	DANGEROUS INFRA.	WSP-IMU	
8/22/1990	TAMPER WITH LOCK	WSP-IMU	
			15

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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	
15			

APPENDIX A

8/17/2013	REFUSE UA TEST	SCCC	

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
1416.83	766.56	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

3/1/1993	6/2/1993	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-Maln	15.33
3/1/2009	6/1/2009	Earned		WSP-IMU	15.33
5/2/1993	9/1/1996	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
5/1/1997	10/1/1997	Not Earned	Segregation	CBCC-IMU	25.60
7/1/2003	12/1/2003	Not Earned	Segregation	CBCC-IMU	25.60
9/1/2013	2/1/2014	Earned	Update Required	SCCC	25.60
3/29/1989	9/20/1989	Earned		WSP-IMU	29.16
11/1/2000	5/1/2001	Not Earned	Segregation	WCC-IMU	30.16
9/1/1996	3/1/1996	Not Earned	Segregation	WSP-IMU	30.33
10/1/2004	5/1/2005	Earned		WSP-Maln	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-Maln	72.66

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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		
6/11/1989	ASSAULT/NON HOSP	WSP-Maln			
6/11/1989	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			
					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			
					180
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			

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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
5/15/1990	ASSAULT/NON HOSP	WSP-IMU	
			30
5/18/1990	ASSAULT/NON HOSP	WSP-IMU	
			180
5/31/1990	ASSAULT/NON HOSP	WSP-IMU	
			30
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

APPENDIX A

8/22/1990	DANGEROUS INFRA.	WSP-IMU	
8/22/1990	DESTROY PROPERTY	WSP-IMU	
8/22/1990	TAMPER WITH LOCK	WSP-IMU	
10/4/1990	DANGEROUS INFRA.	WSP-IMU	
10/4/1990	TAMPER WITH LOCK	WSP-IMU	
10/3/1990	ASSAULT/NON HOSP	WSP-IMU	
10/10/1990	DANGEROUS INFRA.	WSP-IMU	
10/10/1990	POSS UNAUTH TOOL	WSP-IMU	
10/10/1990	DANGEROUS INFRA.	WSP-IMU	
10/10/1990	THROWING OBJECTS	WSP-IMU	
10/12/1990	DANGEROUS INFRA.	WSP-IMU	
10/12/1990	DESTROY PROPERTY	WSP-IMU	
10/12/1990	POSSESS WEAPON	WSP-IMU	
2/19/1991	ASSAULT/NON HOSP	WSP-IMU	
2/19/1991	POSSESS WEAPON	WSP-IMU	
2/19/1991	THROWING OBJECTS	WSP-IMU	
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	
2/23/1996	POSSESS WEAPON	WSP-IMU	
7/29/2013	REFUSE UA TEST	SCCC	

APPENDIX A

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	
118		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 B

Declaration of Cherrie Melby
Dated Mar. 2, 2015

Originally attached to Response of the Department of Corrections
in the Court of Appeals

NO. 46988-0-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

CLARK L. STUHR,

Petitioner.

DECLARATION OF
CHERRIE MELBY

I, CHERRIE MELBY, make the following declaration:

1. I am a legal assistant with the Corrections division of the Attorney General's Office in Olympia, Washington. I have knowledge of the facts stated herein and am competent to testify.

2. I am familiar with the Offender Management Network Information system (OMNI) used by the Department of Corrections (DOC). I am authorized by the DOC to retrieve information from OMNI. Among other things, information regarding an offender's location, custody, birth date, sentence, infractions and grievances are entered and tracked on OMNI. Attached to this declaration are true and correct copies of documents which I obtained from OMNI.

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3. I am also familiar with the public website for the Department of Corrections and retrieved and printed a true and accurate copy of DOC Policy 350.100, Earned Release Time, 1/12/15, which is attached.

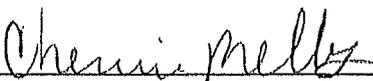
Attachment A: OMNI Legal Face Sheet *excerpts*

Attachment B: DOC Policy 350.100, Earned Release Time, 1/12/15

Attachment C: OMNI Judgment & Sentence View

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 2nd day of March, 2015, at Olympia, Washington.



CHERRIE MELBY

APPENDIX C

Excerpt of the "OMNI Legal Face Sheet" for Clark Stuhr

Originally attached to the Declaration of Cherrie Melby,
which was attached to Response of the Department of Corrections
in the Court of Appeals

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

Cause: AC – 911001143 – Walla Walla

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

APPENDIX D

**“DOC Policy 350.100, Earned Release Time”
Dated Jan. 12, 2015**

Originally attached to the Declaration of Cherrie Melby,
which was attached to Response of the Department of Corrections
in the Court of Appeals



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



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APPLICABILITY

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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,



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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 33¹/₃ 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,



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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.



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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 ¹ / ₃ 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):



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- 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.

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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.

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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.



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- 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

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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 33¹/₃ 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



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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

APPENDIX E

**“OMNI Judgment and Sentence View” for Clark Stuhr
Dated Jan. 27, 2015**

**Originally attached to the Declaration of Cherrie Melby,
which was attached to Response of the Department of Corrections
in the Court of Appeals**

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 R

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/COO: Anita, Christine R

View J & S - Prison

Period Of Jurisdiction
01/06/1989 - Current

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

Display
 Include Closed Causes Enable Scrolling

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

Cause	Count	Confinement Element	Consecutive Confinement	Status	Confinement Length	Time Start Date	Time End Date	ERD	+ Length In Days	- Cause Credits	+ Cause ERT Credit	ERT %	- Potential ET	ET Earned	+ ET Not Earned	Available ET	Potential GCT
Offender Overall																	
○ AB-081001268-Pacific-CP				Active	0Y, 425M, 0D	03/10/1989	04/19/2024	12,935	127	63	33.33%	-	-	-	-	-	2,831
○ 1- Murder 1		Base		Active	0Y, 425M, 0D	03/10/1989	04/19/2024	12,935	127	63	33.33%	1,415.83	650.28	765.55	0.00	2,831	
○ AC-911001143-Walla Walla-CP			AB-081001268-Pacific-CP	Future	0Y, 17M, 0D	04/19/2024	06/08/2025	517	0	0	33.33%	-	-	-	-	115	
○ 1- Assault 2		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	
Out Time																	
○ Wickert				-	-	05/03/1993	05/03/1995	-	-	-	-	-	-	-	-	-	-

Maintain:

Action:

ATTACHMENT

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APPENDIX E

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

OFFICE RECEPTIONIST, CLERK

To: Scharber, Wendy R. (ATG)
Cc: swiftm@nwattorney.net; Copsey, Alan (ATG); Jensen, Kristin (ATG); vanRoojen, Cassie (ATG)
Subject: RE: In re Personal Restraint Petition of Stuhr

Received 2-22-16

Supreme Court Clerk's Office

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: Scharber, Wendy R. (ATG) [mailto:WendyO@ATG.WA.GOV]
Sent: Monday, February 22, 2016 4:42 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: swiftm@nwattorney.net; Copsey, Alan (ATG) <AlanC@ATG.WA.GOV>; Jensen, Kristin (ATG) <KristinJ@ATG.WA.GOV>; vanRoojen, Cassie (ATG) <CassieV@ATG.WA.GOV>
Subject: In re Personal Restraint Petition of Stuhr

Sent on behalf of: Alan Copsey, Deputy Solicitor General WSBA 23305
360-664-9018 : alan.copsey@atg.wa.gov

Cassie vanRoojen, Assistant Attorney General WSBA 44049

In re Personal Restraint Petition of Stuhr : Cause No. 91920-8

Supplemental Brief Of The Washington State Department Of Corrections

Wendy R. Scharber
360-753-3170 : wendyo@atg.wa.gov