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**Report to**  
**The Vermont Legislature**

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**Act 8 Sec 16:**  
**Earned Good Time Report**

**Submitted to:** House Committee on Corrections and Institutions; House Judiciary Committee; Senate Committee on Institutions Senate Judiciary Committee.

**Submitted by:** Lisa Menard, Commissioner, Department of Corrections

**Prepared by:** Monica Weeber, Administrative Services Director

**Report Date:** November 15, 2018



## **Introduction**

Act 8 (special session) Section 16 instructs the Department of Corrections (DOC) in consultation with the Chief Superior Judge, the Attorney General, the Executive Director of the Department of Sheriffs and State's Attorneys, and the Defender General, to report to the Senate and House Committees on Judiciary, the Senate Committee on Institutions, and the House Committee on Corrections and Institutions on the advisability and feasibility of reinstating a system of earned good time for persons under the supervision of the Department of Corrections.

The Commissioner convened meetings with internal and external stakeholders to prepare this report.

Cullen Bullard, Director of Classification, DOC

Cheryl Elovirta, Facility Operations Manager, DOC

Judge Brian Grearson, Chief Superior Judge

Seth Lipschutz and Emily Tredeau, representing the Defender General

James Pepper, representing the Department of Sheriffs and State's Attorneys

Elizabeth Scharnetzki, Corrections Research Analyst, DOC

David Scherr, representing the Attorney General

Mike Touchette, Deputy Commissioner, DOC

Monica Weeber, Administrative Services Director, DOC

## **Advisability**

The team collected information from national reports to review how earned good time is used in other jurisdictions and the potential impacts of earned good time programs. Highlights from that review are:

- The range of possible earned good time deductions varies by state (the range is 15-50%; for example, Pennsylvania had a maximum of 25% sentence deduction, Washington had a max of 50%)
- The empirical work shows that earned good time is effective at prison population management, has little to no effect on public safety/community impact, and correctional administrators perceive earned good time as having a positive impact on facility control (e.g., O'Hear, 2012).
- Regarding cost cutting benefits, earned good time cost cuts range from \$1,800-\$5,500/inmate (depending on number of days sentence was reduced by)
- Research on crime and recidivism is mixed; for example, 1% crime reduction in Illinois, 3.5% reduction in recidivism in Washington
- Some of the major concerns include availability of time reducing programs (and inequities stemming from this) and use of earned good time for punitive reasons

The stakeholders reviewed this information and discussed the advisability of reinstating a system of earned good time for persons under supervision. The PRO's and CON's were vetted, and it was determined that it is advisable to reinstate a program.

**Conclusion:** It is advisable to reinstate a program of earned good time for sentenced inmates and individuals on furlough. The workgroup defines earned good time as merit-based system designed to incentivize offenders to participate in activities that prepare them for reentry. This is different than a system of statutory good time which is typically designed around general offender behavior (such as remaining free from disciplinary action for a certain period of time). The program should not apply to the work camp as this site already has a day for day reduction in term. Detainees should be excluded as their incarceration time is often credited when a sentence is imposed.

PRO	CON
<ul style="list-style-type: none"> <li>- Incentive-based management tool</li> <li>- Potential Cost benefits</li> <li>- Potential for earlier release and integration to the community for those serving in a facility</li> <li>- Potential decrease in time under community supervision</li> <li>- Incentivizes voluntary participation in risk reduction services or other activities</li> <li>- Incentivizes participation in reentry planning</li> <li>- <b>Potential for recidivism reduction</b></li> </ul>	<ul style="list-style-type: none"> <li>- Contrary to truth in sentencing</li> <li>- Victim concerns</li> <li>- Lack of equitable access to programming</li> <li>- <b>Potential decrease in time under community supervision</b></li> <li>-</li> </ul>

**Feasibility**

Review of other states shows that earned good time is awarded for a variety of activities such as education, vocation, rehabilitation, work, and other state specific options. Earned Good time is most often awarded at the completion of a milestone, such as completion of a certain number of hours of an activity that positively reinforce lasting change in behaviors that help individuals reintegrate to their community. The number of days or percentage of time awarded varied by month, year, or time off the original sentence. Earned good time is different than

statutory good time which emphasizes a duration of time in which the inmate exhibits certain behavior (such as not acquiring a disciplinary sanction).

In Vermont, the previous system called “earned reduction in term” or ERT had several discretionary components leaving it open to interpretation as to whether an offender had earned time and how much time to apply. This often resulted in lawsuits and grievances. Any new version of the program must have clear application criteria that would reduce these types of claims.

The PRO’s and CON’s related to feasibility are listed in the table below.

PRO	CON
<ul style="list-style-type: none"> <li>- Based on milestones</li> <li>- Criteria not subjective</li> <li>- Motivates participation in engagement in pro-social, risk reducing and reentry planning.</li> <li>- Potential impact on population management</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>- Equity/Fairness: Facilities lack parity in staff and space to create equitable opportunities to programs, education, vocation and pro-social activities.</li> <li>- Out of state facilities do not have the same opportunities to programs, education, vocation and pro-social activities</li> <li>- A percentage-based model would have a greater impact for people with longer sentences</li> <li>- Is there a potential for increased sentence lengths to account for earned good time?</li> <li>- Adds thousand(s) of sentence computations a year to the sentence computation unit. Additional staff to complete these may be necessary.</li> <li>- If good time was applied in lieu of payment for facility employment, inmates would not have an avenue to save money for reentry</li> <li>- Sentence computations are not fully supported in the offender management system. This may require a financial investment to change system</li> <li>- Adds another task to the caseworker and risk intervention staff job for tracking and submitting paperwork</li> </ul>

## Discussion

The group determined that there are several barriers to overcome before an earned good time program could be reinstated. The major barriers are discussed below.

1. Risk Intervention Services (RIS) Programming opportunities: Participation in risk reduction programming is a major component of most good time programs. The chance to reduce sentence lengths can be motivating for inmates who might otherwise decide to opt out of programming, including programming that is mandated by the court or statute. RIS programming includes participation in one or of the following: employment at Vermont Correctional Industries, Risk and Needs Reducing Programs; Education Programming.
  - a. Currently, most of the risk and need reducing programming is offered at Northern State Correctional Facility and Chittenden Regional Correctional Facility. The Sex Offender program is offered at Northwest State Correctional Facility, with a capacity of 62 participants at any given time. The length of the sex offender program is 12 months for moderate level offenders and 21-24 months for high intensity offenders. 34 offenders completed the program in FY2017. The work group also discussed options where inmates who are mandated by court or statute to complete these programs are not be candidates for earned good time for these specific activities. While no conclusion was reached, it is clear the various options to become eligible for earned good time need to be examined prior to instituting new program.
  - b. Vocational Programming: Options for this programming are limited in Vermont. In 2017, 157 inmates were employed in the VCI Program at Northern State Correctional Facility. Another small group was employed at Northwest State Correctional Facility. As these inmates receive wages for their work, a determination needs to be made as to whether good time would apply to this group.
  - c. Education: In 2017, 1,078 unique people attend education programs through CHSVT. Of this group, 40% (431) were enrolled for up to 30 days. 9% (97) were enrolled over 180 days. In 2018, 926 students attend programs with a similar pattern. Application of good time credits for this program are typically structured around achieving certain length of participation and program milestones. Given the small number of people who remain after 30 days, earned good time would most likely apply to a subset of the high school population. For example, 66% participate for one quarter or less, 25% of that group participate for the full three-month quarter.

RIS programming is not available to all offenders. The availability of appropriate programming needs to be expanded to all correctional facilities if the program is to be accessed by all sentenced inmates. The type of opportunities to create and how to resource them needs further examination to fully assess potential costs and other impacts (staff and space).

2. Resources/Capacity: The department has a sentence computation unit of 3 people. This unit calculates all sentences, including sentence re-computations, and good time computations. Sentence computation is a combination of manual and electronic work that requires attention to detail, knowledge of statute, case law, the ability to read and interpret court documents, and conduct research. An expanded program of good time could add thousands of re-computations a year to this unit.

To determine the impact, the unit calculated the average time it takes to complete work camp good time calculations each month. Depending on the number and complexity of the cases it can take between 6.25 – 16.6 hours each month to complete the work. (The unit receives between 75- 100 good time sheets each month. Time range from 5 to 10 minutes per calculation).

A new program of earned good time would add with the application of good time, approximately 1,100- 1,200 sentenced incarcerated inmates and 800-900 furloughed offenders whose sentences may need to be recalculated each month. This could increase the hours to re-calculate sentences to 158 – 350 hours a month.

To alleviate the increased burden, the department would need to increase the size of sentence computation unit and/or make significant financial investments to modify the sentence computation module of the offender management system. There will be added duties for casework and contractor staff. The vendor for the system is unable to provide a quote until a full description of functionality is developed. Initial conversations indicate it will be a difficult module to change.

The application of earned good time will change the eligibility window for risk intervention services, reentry, and parole eligibility on a regular basis. The connection between programming and release is critical and requires significant coordination and planning. The consideration of good time will add another layer of complexity to this already complex mechanism. Most of the impact will fall on casework staff and program staff as they will be required to track and monitor the continuously shifting timeframes.

3. Impacts on sentences and time served: Any application of earned good time should be evaluated to determine how it would impact various sentence lengths and actual time served. Additionally, there is a possibility that the prosecuting attorney or Judge considers how good time would impact the overall confinement of the defendant at the time of sentencing and increase the sentence to the desired period of confinement, less the good time. These considerations need more examination to fully understand the impact. A new program must address the perception that sentences would be increased as a result.

4. Impact on Victims: An earned good time program must take into consideration the impact on victims. Sentence structure is often complicated and not concretely understood. The addition of good time to the computation exacerbates this program. To promote transparency in the system, victims should be educated at sentencing about the possibility of good time and how it can impact release dates. This would be a role for victim's advocates in state's attorney's offices.

## Conclusion:

The study group determined that implementation (or feasibility) of an earned good time program needs further study. The largest dependency is identifying opportunities for all offenders, regardless of location, to earn good time. Limiting good time to only those who are eligible for programming would limit the impact of the program. Other factors include:

- Cost and feasibility of making changes to the Offender Management System. Initial conversations with the vendor indicate it would be difficult to change the current system.
- Conduct a detailed analysis to determine who could and should re-calculate sentences in order to minimize the burden and create efficiencies. This would include consideration of the following:
  - What specific activity or milestone can earn good time?
  - How much time a person can receive? Maximum number of days? Number of days for each activity?
  - What sentence lengths should be included? Does good time apply to the minimum sentence, maximum sentence, or both? Can Judges make someone not eligible by court order? The federal system (which has determinate sentences) applies good time to *prisoners serving a "term of imprisonment" of more than one year (at least 12 months and one day) and less than life in prison.*
  - What crime types should be included or excluded? Felony versus misdemeanor? Should any specific crime or type be excluded?
  - Should the application of good time be different for those serving a sentence in the community?
  - When should earned good time be credited? Annually? Biannually? Monthly? Milestone achievement? Other?
  - Question about DR's and reaching and milestone. What are the contingencies to consider when applying earned good time (DR's, new charges)?

## Summary

Earned good time program are common throughout state correctional systems. Such a system could be reinstated only after a more detailed analysis of the impacts to:

1. The DOC workflow and ability to provide programs (space/human resources).
2. An analysis of programs that balance the risk and need of offenders to ensure that people receive the services that are needed versus services that can earn them time
3. Victims and Victim Advocates
4. Judiciary (Court, States Attorneys and Defenders)

In consideration of the above, the workgroup recommends that the Legislature continue this study for another year. During this time, the work group can conduct more detailed analysis and make a final recommendation.