




STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
**OFFICE OF THE SECRETARY**

P. O. Box 41101 • Olympia, Washington 98504-1101 • Tel (360) 725-8810

December 24, 2015

**TO:** All Records Staff  
**FROM:**   
Dan Pacholke, Secretary  
**SUBJECT:** Time Calculations

The Department has discovered that certain offenders whose sentences included both pretrial jail good time and a flat time sentence enhancement may have received more good time than they were statutorily entitled to receive. This issue arises only in sentences of offenders who were in DOC custody after July 3, 2002. I am directing the sentence structures of all offenders who were in custody at any point after that time be reviewed for errors if their sentences included both pretrial jail good time and a flat time sentence enhancement.

In an effort to prioritize our records review, I am directing you to begin with a review of those offenders released from custody after December 17, 2011. If a review discovers that an offender was released before serving his or her full prison term, and if he or she was released after December 17, 2011, I am directing that the offender be subject to re-arrest unless certain exceptions apply.

You will be provided with a list of offenders released after December 17, 2011, and prior to December 17, 2015, who have pretrial jail good time and flat time sentence enhancements. This list will include offenders who have been incarcerated on consecutive causes, where the jail time and enhancement attached to the prior cause, because their ultimate release dates were impacted in the same way as offenders who did not serve consecutive sentences. You will also be provided a list of offenders released after July 3, 2002 and prior to December 18, 2011 as the next priority to ensure that the complete list of impacted offenders is reviewed.

Using that list, you are to review each offender's record, record the information in the tracking document, and enter a chrono that details the review determinations you made.

The first step is to record the number of days it has been since the offender was released. The next step is to determine if an offender is eligible to receive credit toward the remaining confinement time for the time spent in the community.

A 2003 decision from the Washington Supreme Court called *In re Roach* held that “a convicted person is entitled to credit against his sentence for time spent erroneously at liberty due to the State’s negligence, provided that the convicted person has not contributed to his release, has not absconded legal obligations while at liberty, and has had no further criminal convictions. Thus, an erroneously released prisoner’s subsequent conduct is relevant to whether equitable relief will be granted.”

After consulting with legal counsel, I have interpreted that language from the Washington Supreme Court as requiring the DOC to credit an offender’s prison term with credits (day-for-day) spent in the community (whether supervised or not) after an erroneous release, unless either of the following two conditions exist:

- 1) During the period of time the offender should have been incarcerated, he or she committed a crime that resulted in a felony, gross misdemeanor, or misdemeanor conviction. Only actual *convictions* count. If the criminal behavior that occurred during the time the offender should have been incarcerated resulted in charges that have not yet been adjudicated, please refer the record to the Statewide Records Administrator, Wendy Stigall, for further review.
- 2) Where the offender was under DOC supervision during the period of time the offender should have been incarcerated, the offender actively avoided supervision by absconding or escaping, resulting in the DOC issuing a secretary’s warrant for abscond, escape, or failure to report. The date of the warrant is a reasonable indicator that the absconding, escape, or failure to report behavior occurred during the period of time the offender should have been incarcerated. Thus, you may rely on the warrant’s issuance date when determining whether the offender is eligible for credits.

If you determine that an offender is eligible for credits, you must then determine if the credits for time out of confinement are greater than the time owed. If credits for time out of confinement exceed confinement time owed, close the offender’s sentence and enter a chrono that documents your decision and reasons not to complete further analysis of the offender’s credits. If the confinement time owed exceeds the credits for time out of confinement, subtract the day-for-day credits from the time owed to determine days left to serve. That will be the time that the offender will then be required to serve. That time may be further adjusted if an offender continues to be eligible for credits prior to the time of arrest.

After consulting with legal counsel, I have decided that the *In re Roach* decision requires the DOC to treat certain less-straightforward cases as follows:

- 1) If an offender was released directly to an in- or out-of-state detainer, the offender will be entitled to day-for-day credit for incarceration time in the other jurisdiction if the time ran concurrently. You can reasonably rely on a judgment and sentence or court order that states the sentences were concurrent. If there is no court order indicating concurrency, or if a court order indicates consecutiveness, the offender is not entitled to credit for incarceration time in the other jurisdiction. But either way, subsequent time in the community would count day-for-day if the two above requirements of *In re Roach* are met (i.e., no new criminal behavior, no absconding supervision).
- 2) If an offender was released to the custody of ICE for an early deportation before completing his or her Washington prison term, you need not complete an analysis of credits because the OMNI fix will correct the credits if and when the offender is arrested in the United States in the future. However, you should enter a chrono that documents your decision and reasons not to complete further analysis of the offender's credits.
- 3) If an offender was released to the custody of ICE on a regular deportation detainer after having completed the Washington prison term, please refer the record to the Statewide Records Administrator, Wendy Stigall, for further review.

If you have any questions about these instructions, please contact Wendy Stigall at (360) 725-8881.