

From: Larson, Ronda (ATG)
Sent: Friday, October 12, 2007 8:01 PM
To: ATG MI CJD Oly Advice
Cc: Weisser, Paul (ATG)
Subject: FW: reducing enhancement terms with jail time

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Requestor: Leora McDonald
Issue: Is the DOC improperly subtracting jail time served from periods of flat time (mandatory minimum terms and enhancements)?

From: Larson, Ronda (ATG)
Sent: Friday, October 12, 2007 1:13 PM
To: McDonald, Leora R. (DOC)
Cc: Mullen, Donna (ATG)
Subject: reducing enhancement terms with jail time

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Leora,

Why does the DOC reduce enhancement time (and mandatory minimum term time) by the amount of time an offender spent in jail? The statute requires that an offender receive no good time on an enhancement term. But the way DOC calculates sentences, it subtracts jail time from the enhancement term, and then on top of that gives the offender the jail good time toward the non-enhancement term. So he gets the best of both worlds. He gets good time on that portion of the enhancement that is reduced by jail time served.

In re King, 146 Wn.2d 658, 49 P.3d 854 (2002), does not require this. Rather, it merely requires that the DOC give an offender his jail good time somewhere in the sentence, which the DOC now does-it credits it toward his non-mandatory term. Furthermore, the mandatory minimum term and enhancement statutes (e.g., RCW 9.94A.728(1), RCW 9.94A.533 and RCW 9.94A.540) say an offender cannot receive good time during the mandatory and enhancement terms. DOC is violating these statutes by its current method of calculating flat time periods.

In fact, the way DOC does things now sets up an equal protection problem. Offenders who serve time in jail get to have shortened periods of flat time by virtue of their time in jail, whereas offenders who happen to spend less time in jail have to serve longer flat time periods. The only reason this hasn't been brought out in the courts is that offenders haven't figured it out yet because the DOC's calculation screens are so difficult to understand for the lay person (and for most lawyers and judges).

The DOC instead should keep the mandatory term intact and subtract the jail time (as it does with jail good time) from the non-mandatory term. I realize this would require reprogramming OBTS. But it is the correct thing, as far as the law is concerned.

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