

# Sentencing Recalculation

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Dan Pacholke,  
Secretary, Department of Corrections

Senate Law & Justice Committee  
January 11, 2016



# Response Priorities

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- Ensure public safety
- Identify and define the problem
- Review systems and practices
- Cooperate with external investigation
- Be transparent and share information

# Sequencing Miscalculation

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A sequencing miscalculation in the agency's electronic records system resulted in inaccurate release dates for some offenders

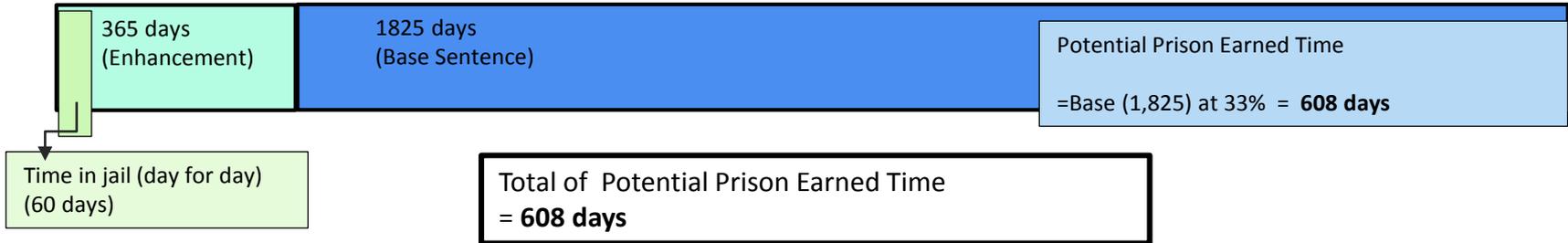
Miscalculation originated from coding changes made in 2002 in response to a Washington Supreme Court decision (*In re King*)

Potentially impacted offenders were those who had a flat-time sentence enhancement

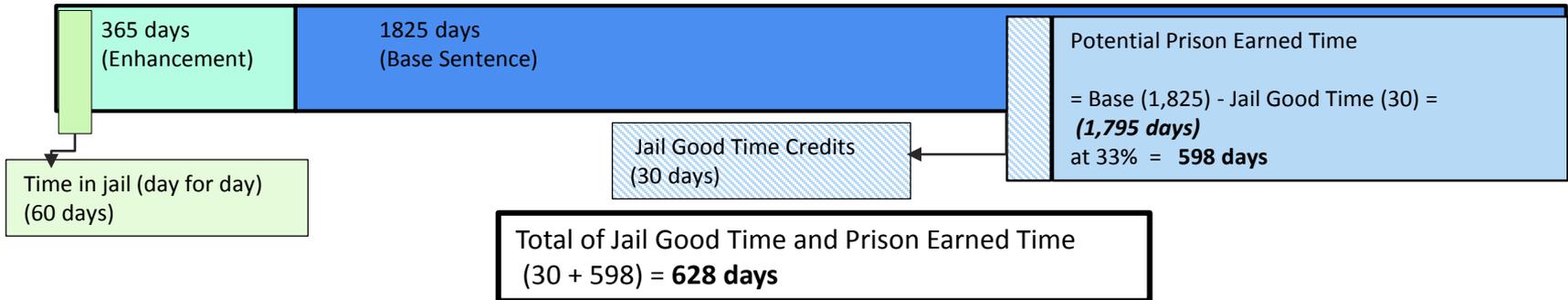
- Represents roughly 3 percent of all offenders released since 2002
- Not all potentially impacted offenders were released prior to their actual release date
- Impacts are largest for offenders that have relatively short base sentences and spent relatively long pre-sentence time in jail

# Sequencing Miscalculation

## Pre-King Calculation



## Original King Calculation



## Revised Calculation



# Most Cases More Complex

Cause	Count	Confinement Element	Consecutive Confinement	Status	Confinement Length	Time Start Date	ERD	+ Length In Days	- Cause Credits	- Cause ERT Credit	ERT %	- Potential ET	ET Earned	+ ET Not Earned	Available ET	Potential GCT	GCT Certified	+ GCT Lost	Available GCT	+ Out Time	MaxEx	Stat Max	Graphical Sentence View																										
																							11/10/2015	01/18/2032	07/26/2048	12/01/2064	04/09/2081	08/17/2097																					
<b>Offender Overall</b>																						Active	OY, 1140M, 0D	11/10/2015	08/17/2097	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	05/06/2106	Life						
AA-111057131-King-CCP																						Active	OY, 1140M, 0D	11/10/2015	08/17/2097	34,698	1,643	290	10.00%	-	-	-	-	-	1,928	0	0	1,928	0	05/06/2106	Life								
1- Murder 1																						Active	OY, 380M, 0D	11/10/2015	08/19/2049	11,865	1,643	290	10.00%	314.94	0.00	0.00	0.00	0.00	314.94	630	0	0	630	0	01/05/2053	Life							
Enhancement -1-Firearm																						-	OY, 60M, 0D	11/10/2015	05/10/2016	1,825	1,643	0	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0	0	0	0	0	-	-	05/10/2016						
Mandatory AA-3-Enhancement																						-	OY, 240M, 0D	05/08/2026	05/07/2046	7,304	0	0	0.00%	0.00	0.00	0.00	0.00	0.00	0	0	0	0	0	0	-	-	05/07/2046						
Base AA-3-Enhancement																						-	OY, 320M, 0D	05/08/2026	08/19/2049	9,739	0	290	10.00%	314.94	0.00	0.00	0.00	314.94	630	0	0	630	0	-	-	05/19/2049							
2- Murder 1																						Future	OY, 620M, 0D	05/10/2016	08/18/2073	18,870	0	0	10.00%	324.60	0.00	0.00	0.00	324.60	649	0	0	649	0	09/05/2079	Life								
Enhancement -1-Firearm																						AA-1-Enhancement	-	OY, 60M, 0D	05/10/2016	05/09/2021	1,825	0	0	0.00%	0.00	0.00	0.00	0.00	0.00	0	0	0	0	0	-	-	05/09/2021						
Mandatory AA-3-Enhancement																						-	OY, 240M, 0D	05/08/2026	05/07/2046	7,304	0	0	0.00%	0.00	0.00	0.00	0.00	0.00	0	0	0	0	0	0	-	-	05/07/2046						
Base AA-1-Base																						-	OY, 320M, 0D	08/19/2049	08/18/2073	9,739	0	0	10.00%	324.60	0.00	0.00	0.00	324.60	649	0	0	649	0	-	-	08/18/2073							
3- Murder 1																						Future	OY, 620M, 0D	05/09/2021	08/17/2097	18,870	0	0	10.00%	324.60	0.00	0.00	0.00	324.60	649	0	0	649	0	05/06/2106	Life								
Enhancement -1-Firearm																						AA-2-Enhancement	-	OY, 60M, 0D	05/09/2021	05/08/2026	1,825	0	0	0.00%	0.00	0.00	0.00	0.00	0.00	0	0	0	0	0	-	-	05/08/2026						
Mandatory AA-3-Enhancement																						-	OY, 240M, 0D	05/08/2026	05/07/2046	7,304	0	0	0.00%	0.00	0.00	0.00	0.00	0.00	0	0	0	0	0	0	-	-	05/07/2046						
Base AA-2-Base																						-	OY, 320M, 0D	08/18/2073	08/17/2097	9,739	0	0	10.00%	324.60	0.00	0.00	0.00	324.60	649	0	0	649	0	-	-	08/17/2097							

Above is an example of an offender who is still incarcerated. This offender has three counts and each count has a three elements: a base length, a mandatory length due to a requirement that a Murder 1 serve a 20 year flat time length, and a flat time firearm enhancement. All the enhancements run consecutive first, then secondly each of the mandatory lengths run concurrent to each other (but consecutive to the firearm enhancements), and then third each base length runs consecutive to the other base lengths, with the first base length starting concurrent to the mandatory length of the first count.

The data system needs to follow each element of each count to determine where to apply any good time or earned time credits. As in the example above, elements can run consecutive or concurrent to each other (and with elements from other counts). Each sentence is different based on the individual Judgement and Sentence and any statutory requirements. The credit amounts are entered as a value in the credit field of the system. The system begins the calculation process to determine what the ultimate end date is for each count element based on the rules coded into the system. In this example there are 1,643 days of credit for time served in jail, and the jail certified 290 days of jail good time. The system will also calculate the amount of DOC earned release credit available as part the complete calculation process to determine the end date of each element.



# Ensure Public Safety

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Mobilized all available resources toward solving the problem. Safety of the public, victims, employees and offenders is the top priority.

- Performed manual sentence recalculations for all potentially impacted incarcerated offenders scheduled to be released through February 7<sup>th</sup>
  - Ensuring no additional releases from prison prior to the actual release date
- Updating and rigorously testing the new computer coding
- Placed facility Special Emergency Response Teams on stand-by to respond should they be needed
- Made counselor services available for employees and offenders

# Ensure Public Safety continued

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- Initiated manual sentence recalculations for all potentially impacted offenders in the community to identify offenders who owe time
- Performed criminal history and court record searches to identify offenders that committed crimes
- Created processes, policies, and resources to detain and arrest offenders in the community who owed time as required by law
- Mobilized Community Response Units, working with local law enforcement partners, to apprehend offenders who owe time

# Identify and Define the Problem

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Identify and define the scope and nature of this system-wide problem

- Obtained legal clarity around offenders in the community
  - Application of *In re: Roach*
  - Application of a fairness standard based on case law
  - Developed arrest protocols

# Manual Recalculation Process

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- Generate a list of offenders that have flat time enhancements and were released since July 2002.
- Prepare a review packet that includes information from the Judgment and Sentence, criminal history checks, court record checks, and case management violation records.
- Perform a manual recalculation of earned release dates for potentially impacted offenders. Review criminal history, court records, and supervision records. Determine *Roach* credit eligibility.
- Complete a second review of the information in the packet and recalculate earned release dates. Review *Roach* credit eligibility.
- Complete a third review of the information and calculations. Forward appropriate files for arrest protocol.

Three Separate Teams

# Arrest Protocols

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Once it is determined that an offender owes time, further review of the specific case is made to determine appropriate action. Options include:

- Furlough - RCW 72.66
  - Statutory rules requiring signed agreement with an offender and a sponsor
  - Statutory limits on length – 30 days with possibility of extending 30 days
- Work Release - RCW 9.94A.728 (1)(e)
  - Statutory limits on length – final 6 months of an offender’s sentence
- DOC Camp
- DOC Institution
- Local Jail

# Review Systems and Practices

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- A comprehensive review to identify issues and to put in place policies and procedures to prevent future incidents
- Apply best practices from the operational divisions to administrative services functions:
  - Overall review of functional alignment and span of control for administrative services functions
  - Enhance IT governance and prioritization processes
  - Implement quality assurance on data and records
  - Review of incident–related policies and procedures
  - Determine the appropriate training for employees

# Cooperate with External Investigation

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- Governor Inslee has hired Robert Westinghouse and Carl Blackstone, two retired federal prosecutors, from the firm of Yarmuth Wilsdon PLLC, to conduct an external investigation to determine the facts regarding this incident.
- Providing external investigators access to employees and records

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“I have a lot of questions about how and why this happened, and I understand that members of the public will have those same questions. I expect the external investigation will bring the transparency and accountability we need to make sure this issue is resolved.”

Governor Inslee  
December 22, 2015



# Be Transparent and Share Information

Importance of keeping the public and stakeholders informed

Created a frequently updated public website to share agency efforts:

- Documentation and information
- Frequently asked questions
- List of affected offenders

Ongoing outreach to stakeholders, community partners, victim organizations, employees, offenders' friends and families, and offenders,



The screenshot shows the Department of Corrections Washington State website. The header includes navigation links: Family & Friends, Victims, Facilities, Offender Info, Community, Jobs, and About. A 'News' tab is selected. The main content area features a news article titled 'Sentencing Error Information' with a sub-headline: 'Governor Inslee announces immediate actions to fix 13-year-old sentencing errors discovered at state prisons'. Below the article, there is a 'Contact' section with phone and email information, and a 'Documentation' section listing various documents and their update dates.

[www.doc.wa.gov](http://www.doc.wa.gov)



# Timeline

## Chronology leading up to December 2015

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1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015

**1995:** Hard Time for Armed Crime was enacted to increase confinement time when firearms or deadly weapons are used in the commission of a crime.

**2006:** A flat time enhancement for crimes committed with sexual motivation was enacted.

Source: ["Good Time" Compliance Timeline](http://www.doc.wa.gov), Department of Corrections website ([www.doc.wa.gov](http://www.doc.wa.gov))



# Timeline

## Chronology leading up to December 2015

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**July 2, 2002:** *In re King* decision<sup>1</sup> was issued by the state Supreme Court requiring DOC to credit offenders for good time earned in jail.

**Early July 2002:** DOC changes its good time coding to comply with the King decision. The sequencing of the how the credit for jail time served is applied system-wide begins to impact the calculation of release dates for offenders with flat time enhancements.

**2002:** For the remainder of 2002, 17 offenders released with flat time enhancements out of a total of 3,659 releases (0.5 percent)

<sup>1</sup> *In re King*, 146 Wn.2d 658, 49 P.3d 854 (2002)

Source: [“Good Time” Compliance Timeline](#), Department of Corrections website ([www.doc.wa.gov](http://www.doc.wa.gov))

# Timeline

## Chronology leading up to December 2015

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A 2003 decision from the Washington Supreme Court called, *In re Roach*<sup>1</sup> 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.”

<sup>1</sup> *In re Roach*, 150. Wash.2d 29, 74 P.3d 134 (Wash. 2003),

Source: [Explanation of Roach Decision](#), Department of Corrections website ([www.doc.wa.gov](http://www.doc.wa.gov))

# Timeline

## Chronology leading up to December 2015

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**December 2012:** A victim’s family, concerned about the imminent release of an offender, alerted DOC of their concern with his release date. The DOC manually calculated and corrected the specific offender’s good time credit. This was the first time DOC became aware there was a good time sequencing issue.

**Dec. 7, 2012:** DOC consulted with legal counsel regarding this error and consequently scheduled a fix for the programming problem to occur during the next scheduled IT update.

**Dec. 27, 2012:** A service request to DOC’s IT unit was submitted describing the problem and requesting a fix, and indicated the fix was needed ASAP.

**December 2012 to December 2015:** There were 16 software updates in this period and the new coding for this problem was not included in any of those releases. (This is part of the ongoing external investigation.)

Source: [“Good Time” Compliance Timeline](#), Department of Corrections website ([www.doc.wa.gov](http://www.doc.wa.gov))



# Timeline

December 2015



## December 2015

**12/15:** DOC's senior leadership team was briefed on the issue. DOC begins to investigate the scope of the impact

**12/16-17:** DOC leadership briefs Governor's staff

**12/18:** DOC leadership meets with Governor Inslee

### 12/18:

- DOC mobilizes emergency response to the incident
- DOC ordered a hand calculation of sentences of all impacted offenders before offenders were released from prison
- DOC began a manual review of all potentially impacted records to determine which offenders already released to the community needed to be brought back to the system.

Source: ["Good Time" Compliance Timeline](#), Department of Corrections website ([www.doc.wa.gov](http://www.doc.wa.gov))



# Ongoing Work – Seven Days A Week

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- Software fix scheduled for early January 2016. The software fix is going through rigorous testing before deployment.
- Mobilized a cross-disciplinary team to prioritize IT projects
- Continuing a manual record review of all potentially impacted offenders
- Arresting and detaining offenders who owe time
- Cooperating with the external investigation
- Reviewing systems, policies and training
- Starting conversations with Statewide Risk Management to assess organizational vulnerabilities

# Questions?