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COMMITTED YOUTHFUL OFFENDER TREATMENT AND PAROLE

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Distribution: District and superior court judges; district attorneys and assistant district attorneys; public defenders and assistant public defenders; Director and Assistant Director, Administrative Office of the Courts; Parole Commissioners; Secretary of Correction; Director of Prisons; Director of Adult Probation and Parole; Probation/Parole Branch Managers.

This memorandum is written to familiarize judges, prosecutors, public defenders, and others with a recent opinion of the Attorney General dealing with parole and treatment of committed youthful offenders. First, however, it will be useful to review the law on the sentencing of youthful offenders and their status in prison.

THE LAW ON YOUTHFUL OFFENDERS

The present statute on committed youthful offenders, Article 3A of Chapter 148, was extensively amended in 1967, following the Federal Youth Correction Act of 1950 (18 U.S.C. § 5005 et seq.). The present Article 3A (G.S. 148-49.1 through -49.9, 1974 Replacement Volume and 1975 Supplement) reflects very little change since 1967.

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Purpose of Article. The purpose of Article 3A is to improve a young offender's chances of rehabilitation by preventing his association with older offenders and "by closer coordination of the activities of sentencing, training in custody, conditional release or parole, and final discharge." The Article is intended to provide a sentencing option for the court "where, in the opinion of the court, a youthful offender requires a period of imprisonment, but no longer than necessary for the Parole Commission to determine that the offender is suitable for a return to freedom and is ready for a period of supervised freedom as a step toward conditional discharge and restoration of the rights of citizenship" (G.S. 148-29.1).

Definition of "Youthful Offender," "CYO," and "RYO." A youthful offender is one under the age of twenty-one at the time of conviction, and a committed youthful offender (CYO) is a youthful offender committed to prison under the provisions of Article 3A (G.S. 148-49.2). The term "regular youthful offender" (RYO) does not appear in any statute, but by common usage it refers to a youthful offender who has been sentenced to prison without being specifically designated a committed youthful offender by the judge.

Presentence Diagnostic Commitment. G.S. 148-49.3 allows the judge, after a youthful offender has been convicted of an offense punishable by imprisonment, to commit him for up to ninety days for study by the Department of Correction, which must submit a "diagnostic study report" to the judge. (The defendant must receive a copy of the report before he is sentenced and be given an opportunity to dispute it.)

Sentencing As an RYO or CYO. When a youthful offender has been convicted of an offense punishable by imprisonment and is not placed on probation, the court may "sentence the youthful offender to the custody of the Secretary of Correction for treatment and supervision pursuant to [Article 3A]," but "[i]f the court shall find that the youthful offender will not derive benefit from treatment and supervision pursuant to [Article 3A], then the court may sentence the youthful offender under any other applicable penalty provision" (G.S. 148-49.4, emphasis added).

The language just quoted brings out a very important aspect of CYO sentencing. If the sentencing judge wishes the youthful offender to be an RYO--i.e., not given special CYO treatment--the North Carolina of Appeals, following the U.S. Supreme Court, has held that he must enter on the record a finding that the offender will not benefit from CYO treatment. In Dorszynski v. United States [418 U.S. 424 (1974)], the U.S. Supreme Court construed the Federal Youth Correction Act of 1950, 18 U.S.C. § 5005 et seq., on which the North Carolina statute was based. Like the provision of G.S. 148-49.4 just quoted, 18 U.S.C. § 5010(d) says that "[i]f the [U.S. District] court shall find that the youth offender will not derive benefit from [special CYO] treatment under subsections (b) and (c)," it may impose any other applicable penalty. The Supreme Court held that if the sentencing judge decides not to give CYO treatment to the youth offender, he must make an "explicit

1. A "youth offender" in the federal statute is a person younger than 22 when he is convicted of a federal crime [18 U.S.C. § 5006(e)].

finding" on the record that the convicted youth offender will not benefit from this treatment, although he need not give his reasons for so doing. The purpose of this requirement, the Court said, is to carry out what Congress intended: that the sentencing judge carefully consider the option of a CYO sentence before exercising his discretion to reject that option. When a federal judge fails to mention CYO treatment at all in his judgment, the remedy for the convicted youth offender is to seek resentencing in the trial court. In Dorszynski, the case was remanded to the U.S. district court for resentencing. Federal decisions in similar cases since Dorszynski have given the same relief. For example, in Brager v. United States [527 F.2d 895 (8th Cir. 1975)] the U.S. court of appeals said that "a Dorszynski based attack on a sentence will ordinarily be launched by means of an application for post-conviction relief under [18 U.S.C.] § 2255" (527 F.2d at 898). The U.S. court of appeals held that the sentencing judge must then explicitly indicate that he determined at the time of the original sentencing that the defendant would not benefit from CYO treatment, but need not hold an evidentiary hearing with the defendant present.

State v. Mitchell [24 N.C. App. 484, 211 S.E.2d 645 (1975)] involved a defendant under 21 sentenced to imprisonment of 16 to 20 years on two counts of armed robbery. The sentence specified that the defendant was to be imprisoned as a "regular youthful offender." Following Dorszynski [supra], the North Carolina Court of Appeals held:

The quoted last sentence of G.S. 148-49.4 [quoted earlier in this memorandum] expresses a clear legislative intent that a youthful offender receive the benefit of a sentence as a "committed youthful offender," unless the trial judge shall find that he will not derive benefit from such sentence.

To comply with the manifest desires of the legislature that sentencing as a "committed youthful offender" be considered as one option when the defendant is eligible for it, the trial judge must make a "no benefit" finding or make some other finding that makes clear that he considered such option and decided that the defendant would not derive benefit therefrom, but it is not required that such finding be accompanied by supporting reasons [24 N.C. App. at 488, 211 S.E.2d at ____].

The result was that one of Mitchell's armed robbery cases was remanded to the superior court for resentencing. (The other was retried for reasons apart from the sentence.)

Since Mitchell [supra] was decided, the North Carolina Court of Appeals has remanded for resentencing two cases involving youthful offenders in which the sentencing judge did not commit the offender as a CYO but failed to make an explicit finding that he would not benefit from CYO treatment [State v. Jones, 26 N.C. App. 63, 214 S.E.2d 779 (1975); State v. Worthington, 27 N.C. App. 167, 218 S.E.2d 233 (1975)]. Thus the holding of Mitchell is firmly established. When youthful offenders are committed to prison by a judgment which contains no finding that the offender will not benefit from CYO treatment, the North Carolina Department of Correction temporarily handles the offenders as RYO's but routinely informs such offenders, during the "diagnostic process" that begins when they arrive at the prison, of their right to petition the court for resentencing and gives them a form letter that

they may use to request a resentencing hearing [telephone conversation with Dwight Sanderford, Director, Youth Services Complex, Department of Correction, December 31, 1976; 5 N.C. Admin. Code § 2C.0802(a) (8)].

Other Aspects of CYO Sentencing. G.S. 148-49.4 provides that in sentencing a youthful offender as a CYO, "the court shall fix a maximum term not to exceed the limit otherwise prescribed by law for the offense," and requires the maximum term to be at least one year unless the legal maximum is less than one year. The statute does not provide for a minimum term. The North Carolina Court of Appeals has held three times in the last two years that setting a minimum term for a CYO is invalid [State v. West, 27 N.C. App. 247, 218 S.E.2d 494 (1975); State v. Satterfield, 27 N.C. App. 270, 218 S.E.2d 504 (1975); State v. Williams, 28 N.C. App. 320, 220 S.E.2d 856 (1976)].

The statutes and case law do not make clear what happens to the status of a youthful offender who is committed to prison as a CYO on one charge but receives an RYO sentence for another crime before his twenty-first birthday. At one time, the Department of Correction followed the rule "once a CYO, always a CYO," but no longer does so. The Department and the Parole Commission now take the view that once a CYO receives an RYO sentence, he becomes an RYO, in the sense that he loses his privilege (under G.S. 148-49.8) of parole at any time and his right to parole within four years of commitment, and thus becomes an "ordinary inmate" for purposes of parole [5 N.C. Admin. Code § 2C.0802(a) (8)]. The Attorney General shares this view (letter from Rufus L. Edmisten, Attorney General, to James E. Cline, Parole Commissioner, August 27, 1975).

The law is also unclear on the status of a CYO whose parole is revoked. The Department of Correction apparently takes the view that if a CYO is paroled and has his parole revoked within four years of his original commitment to prison, he is still a CYO on return to prison. However, if the parole is revoked after four years have elapsed, he is considered an RYO.

What Difference Does CYO Status Make? It appears that, in practice, the primary difference between CYO status and RYO status is with regard to eligibility for release. An RYO, like any other offender sentenced to imprisonment, is eligible for parole only after he has served one-fourth of his sentence, or one-fourth of his minimum sentence, if he has one (G.S. 148-58); if he is not paroled, he must serve his sentence, or his minimum sentence if any, before unconditional discharge (G.S. 148-42). In contrast, a CYO may be paroled at any time after reasonable notice by the Parole Commission to the Secretary of Correction [G.S. 148-49.8(a)], must be paroled within four years of commitment, and may be discharged unconditionally before his maximum term expires [G.S. 148-49.8(c)]. G.S. 148-49.6 further provides that the

2. There are exceptions: a misdemeanor sentenced to less than one year may be paroled after serving one-third, and every prisoner must be paroled not later than ninety days before his maximum sentence expires [G.S. 148-60.3, -60.2].

Secretary may recommend to the Parole Commission at any time that the CYO be paroled. (This same statute also says the Secretary may "order the immediate conditional release as provided in G.S. 148-49.8"; this language should be regarded as invalid since it resulted from an oversight in drafting during the 1975 General Assembly session. See Institute of Government, North Carolina Legislation 1975, p. 30.)

G.S. 148-49.7(a) requires that CYOs be housed apart from older offenders, and "according to their needs for treatment, insofar as practical." In practice, RYOs are similarly housed. According to Dwight Sanderford, Director, Youth Services Complex, Department of Correction, the present policy is as follows. All CYOs and RYOs younger than 18, whether felons or misdemeanants, are first sent to Western Correctional Center (Morganton) for "diagnosis." They remain at Western until (1) they attain "minimum custody level three" status, when they may be transferred to Burke or Sandhills Youth Center; or (2) they reach age 18, when they are transferred to Polk or Harnett Youth Center. CYOs and RYOs aged 18 to 21, if convicted of misdemeanors only, are first sent for "diagnosis" to one of the field (prison) units designated as reception centers in one of the six geographic areas into which the state prison system is divided. For a period less than one month, they remain in the reception center, where they may come into brief contact with older offenders. They are then sent to one of the field units classified as "Minimum Custody-Youth": Duplin, Goldsboro Youth Center, Martin, Johnston Youth Center, Umstead Youth Center, Montgomery, Stokes, Gaston, or Alexander. Felon CYOs and RYOs aged 18 to 21 may be received at Polk or Harnett Youth Center or at one of the field reception units. They remain at Polk or Harnett until (1) they attain "minimum custody," in which case they are sent to one of the "Minimum Custody-Youth" units just mentioned; or (2) they reach age 22, at which time RYOs are transferred to adult units; or (3) they are released unconditionally, having served out their full sentence, or their minimum sentence, if any. (One exception to the housing scheme just described is made for CYOs and RYOs who behave badly in prison--for example, persistently try to escape. These few youthful offenders are kept in "close custody" in either a youth or adult unit.)

RYOs who are still in prison when they reach age 22 are usually transferred to adult units according to their custody classification at the time (minimum, medium, close, maximum). CYOs, on the other hand, usually are kept in youth units until four years from the date of their commitment.³ Thus, a CYO committed at age 20 would normally stay in a youth unit until age 24, but an RYO committed at age 20 would go to an adult unit at 22.

G.S. 148-49.7(a) requires that the Secretary of Correction "insofar as possible, provide personnel specially qualified by training, experience, and personality to operate facilities for committed youthful offenders," and as already mentioned, G.S. 148-49.1 provides for coordinating "training in custody" with sentencing and parole where CYOs are concerned. In practice, this means that CYOs receive priority with regard to participation

3. However, a CYO might be transferred to an adult unit earlier to take advantage of a program there or to be closer to a work release job opportunity.

in special programs of the Department of Correction, although RYO's are not necessarily excluded from these programs. CYO's receive more attention and progress more rapidly toward privileges and participation in programs than RYO's. When they enter prison, CYO's receive a more thorough "diagnostic" study than RYO's, including a "clinical psychological examination," which RYO's do not necessarily receive [5 N.C. Admin. Code §§ 2D.0802(a), 2C.0103(b)(1)]. A CYO's classification is reviewed every three months if he is a misdemeanor and every six months if he is a felon [5 N.C. Admin. Code § 2C.0892(c)]; an RYO receives such review at six-month intervals, whether he is a felon or misdemeanor, for the first and last three years of his sentence [5 N.C. Admin. Code § 2C.0104(d)]. Also, a felon CYO is considered for promotion from medium to minimum custody sooner than a felon RYO [5 N.C. Admin. Code § 2C.0503].

Once paroled, CYO's and RYO's are handled similarly. Both receive credit toward the unserved portion of their sentence for time spent on parole in compliance with conditions of parole [G.S. 148-49.8(b), -58.1(a)] [before the 1975 amendments to G.S. 148-58.1(a), only CYO's got such credit]. CYO and RYO parolees are supervised similarly while on parole, and are subject to similar arrest and revocation procedures [see G.S. 148-49.9(b), -61.1].

TERMINATION OF SEGREGATION AND TREATMENT OF CYO's: THE ATTORNEY GENERAL'S OPINION

G.S. 148-49.6 provides:

The Secretary of Correction shall have authority to terminate the segregation and treatment as a committed youthful offender of any prisoner who, in the opinion of the Secretary, exercises a bad influence upon his fellow prisoners, or fails to take proper advantage of the opportunities offered by such segregation and treatment.

The difficulty in interpreting this statute revolves around the word "treatment." Does "treatment" refer only to eligibility for special rehabilitative programs in prison, or does it include the CYO's eligibility for unconditional release or parole at any time, and his right to parole within four years?

Apparently the Department of Correction has chosen the broader definition, even though the use in Article 3A of the word "parole" separately from the word "treatment" suggests that the latter does not include the former. The Department has taken the position that when a CYO exercises a bad influence or fails to take proper advantage of his CYO opportunities, it may terminate not only his segregated confinement and eligibility for special programs, but also his privilege of possible parole or unconditional discharge at any time and his right to parole within four years of commitment provided by G.S. 148-49.8. [See 5 N.C. Admin. Code § 2C.0892(f).] In other words, if a person was committed to prison as a CYO on a ten-year maximum sentence, the Department believed it could change his status from that of one who may be released at any time and must be paroled within four years to that

of an ordinary prisoner who is eligible for parole after serving two and one-half years but may be required to serve the full ten years. (This ending of the CYO's status has become known as "disqualification" in the Department of Correction.)

The Attorney General ruled on November 24, 1976, that the right to parole in four years is "not a part of the treatment which may be terminated by the Secretary of Correction." The opinion said that even if G.S. 148-49.6 was intended to empower the Secretary to take away the CYO's right to parole within four years under G.S. 148-49.8(c), there is no way that he can do this and still meet today's standards of constitutional due process. The opinion cites recent U.S. Supreme Court cases setting standards of due process in revoking both accrued time off for good behavior [Wolff v. McDonnell, 418 U.S. 539 (1974)] and probation and parole [Morrissey v. Brewer, 408 U.S. 471 (1972); Gagnon v. Scarpelli, 411 U.S. 778 (1973)]. Reasoning that the standards for revoking the right to be paroled in four years must be even stricter than those for revoking good time, parole, or probation, the opinion concludes that the right could be taken away only in "a judicial process in which the offender would have the full panoply of due process." Since no such procedure exists, the Secretary's authority to take away the right is invalid.

However, the Attorney General found, the Secretary may terminate the segregation and treatment of the CYO:

The termination of the segregation and treatment of a committed youthful offender would require much less procedural due process, since the only interests involved are segregation from other inmates and participation in special programs. The length of the offender's incarceration would not be directly affected. Therefore, the only due process required for this termination is that the offender be given notice of the charge, an opportunity to respond to the charges, and a written statement setting forth the reasons for the termination of segregation and programs [p. 5 of opinion].

The present Department of Correction regulation on "disqualification" of CYOs [5 N.C. Admin. Code § 2C.0802(f)] does not provide for the notice, opportunity to respond, and written statement of reasons that the Attorney General's opinion calls for. It is now being revised by the Department.

→ Drennan

ADDENDUM TO ADMINISTRATION OF JUSTICE MEMORANDUM OF JANUARY 20, 1977
COMMITTED YOUTHFUL OFFENDER TREATMENT AND PAROLE

The memorandum as written is still correct as applied to persons sentenced as committed youthful offenders before October 1, 1977. With regard to persons sentenced as CYOs on and after that date, some changes by the 1977 General Assembly should be noted.

Chapter 732 of the 1977 Session Laws repeals Article 3A of G.S. Chapter 148 (the present youthful offender statute) and replaces it with a new Article 3B, applicable to persons sentenced on or after October 1, 1977. Purpose: The purpose of new Article is the same as that of the old. Definitions: Ch. 732 defines "youthful offender" as a "person under 21 years of age in the custody of the Secretary of Correction," making clear that the Department does not have to handle prisoners as youthful offenders when they reach age 21 in its custody. A "committed youthful offender" is defined as one who has the benefit of possible early parole.

Presentence diagnostic commitment: Ch. 732 repeals G.S. 148-49.2, the former presentence diagnostic commitment provision for youthful offenders, and does not replace it; however, it leaves in effect G.S. 148-12, which allows up to 90 days' diagnostic commitment of any convicted person. Sentencing as a CYO: Ch. 732 requires that when a person under 21 is convicted of an offense punishable by imprisonment and the court wishes to impose active imprisonment, it must either make a finding on the record that the offender will not benefit from CYO treatment or sentence him as a CYO. (This provision merely restates case law summarized in the memorandum.) In sentencing a CYO, the court must fix a maximum prison term of 20 years or the legal maximum for the offense, whichever is less; this term must be at least one year if the legal maximum is one year or more. Ch. 732 makes no mention of setting a minimum term for a CYO, but case law discussed in the memorandum makes such a term invalid. Ch. 732 provides that if the court suspends its sentence and imposes probation, it may not order CYO commitment at that time, but if probation is revoked while the offender is still under 21, the court may then commit him as a CYO.

What difference does CYO status make? Ch. 732 provides that a person sentenced as a CYO on or after October 1, 1977, may be paroled at any time; this continues the provisions of present G.S. 148-49.8(a). However, Ch. 732, by repealing G.S. 148-49.8(c), removes the requirement that a CYO be paroled or discharged within four years of commitment.

Treatment of youthful offenders: Ch. 732 requires the Secretary of Correction to house all youthful offenders (under present G.S. 148-49.7(a) only CYOs are included) separately from older prisoners "to the extent practicable." It also requires that every youthful offender must receive a classification study upon entering prison for the purpose of planning his treatment program. Note also that an existing statute, G.S. 148-22.1(b), gives priority with regard to education programs to inmates under 21 when they have at least six months and not more than five years to serve before they are eligible for parole.

Stevens H. Clarke