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Jailers, Sheriffs,  
Members of Parole Commission,  
Parole Case Analysts,  
District & Superior Court  
Judges, County Attorneys

# ADMINISTRATION OF JUSTICE MEMORANDA

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## PAROLE AND "GOOD TIME" FOR SENTENCED JAIL PRISONERS, WORK ASSIGNMENT AND WORK RELEASE OF SENTENCED JAIL PRISONERS, AND 1979 LEGISLATION AFFECTING JAILS

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### 1. 1979 Legislation Affecting Jails

As most jailers probably know by now, the 1979 Session of the General Assembly produced very little legislation affecting jails. Chapter 456 of the 1979 Session Laws, effective April 24, 1979, prohibited the sentencing of convicted felons to local jails. This was amended by Chapter 787, effective June 4, 1979, to allow felons to be sentenced to jail, but only if the sheriff or the county commissioners request it. The Fair Sentencing Act, which goes into effect July 1, 1980, does not alter this restriction on sentencing felons to jail. [For more on the Fair Sentencing Act affecting jails in the future, see Section 6 of this memo.]

Chapter 758 of the 1979 Session Laws clarifies the law regarding detention of a defendant who appeals his district court conviction to superior court for a trial de novo. It says that if such a defendant cannot comply with conditions of pretrial release (i.e., bail), the judge may order him confined in a local jail pending the trial in superior court.

### 2. Parole of Sentenced Jail Prisoners

The Parole Commission and its staff have worked out a new procedure with regard to future parole of prisoners serving sentences in local jails. Jailers and sheriffs will be hearing about this from the Commission itself (it will send new forms and instructions). The new procedure protects the jailer's and sheriff's legal position much better than the old procedure: It makes clear that the parole of a jail prisoner is an official act of the Parole Commission, not the jailer or sheriff. The new procedure described below will go into effect soon, and jailers will be informed about it by the Parole Commission.

To describe the procedure, it is sufficient to describe the content and function of the new form, entitled "Notice of Confinement in Local Facility" (Form PC-107, 11/79). The jailer should complete the form and send it to the Parole Commission for every prisoner sentenced to his

jail,<sup>1</sup> keeping one of the copies for his records.

Part I of the form notifies the Commission of the sentence to jail; there are blanks for the sheriff's name and address, the county name, the prisoner's name, race, sex, and age, the length of his sentence (including minimum term, if any), his crime, the date the sentence began, the amount of jail credit (usually shown on the court commitment), and the court docket number.

Part II of the form gives the sheriff a chance to request denial of parole. The sheriff may, if he wishes, give his reasons why parole should be denied and sign his name. Examples of reasons that the Commission feels may justify denial are given on the back of the form; these include a jail rule violation or assault similar to the offense for which the prisoner is serving his sentence, an extensive prior record or psychological examination indicating that the prisoner is dangerous, and an outstanding detainer against the prisoner.

Part III of the form is the part jailers and sheriffs will probably like most. This part is filled out by the Parole Commission, to indicate whether it approves or denies parole, and if it approves, to indicate the parole date. Note that the Commission -- not the jailer or sheriff -- will determine the parole date and write it on the form to send back to the jailer. The two commissioners who make the decision on the denial or approval of parole will sign Part III and indicate the date of their action.

The instructions on the form say that the sheriff is to complete his portion of it and send it to the Parole Commission within two working days of the prisoner's incarceration, with a copy of the court commitment attached. The parole date "will be computed, approved or denied by the North Carolina Parole Commission and returned to you within (5) days. This will be your authority to release the inmate or to continue to hold him." The Commission will send two copies of the form back to the sheriff (with its portion completed). One copy is for the jailer to keep. If the inmate's parole is approved, the jailer should have the inmate sign the jailer's copy of the form and then file it for his record. The other copy goes to the inmate.

Thus, if the Parole Commission indicates its approval, the completed form becomes a "parole agreement" authorizing the release of the inmate on parole. Only one condition of parole<sup>2</sup> appears on the form: "I will obey all municipal, county, state, and federal laws." The jailer or

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<sup>1</sup>G.S. 148-32.1(e) specifically requires the local jailer to notify the Parole Commission of a 30-to-180-day jail sentence, but the best policy is to notify the Commission of all jail sentences (regardless of length) because the Commission's paroling authority extends to all persons "held by virtue of any final order or judgment of any court of this State" (G.S. 143B-266).

<sup>2</sup>This condition is absolutely required in all paroles by G.S. 15A-1374(a).

sheriff should read this condition to the inmate, making sure that he understands that he is being paroled by the North Carolina Parole Commission, and that his parole can be revoked and he can be forced to serve the rest of his sentence if he violates the condition. His signature should then be obtained on the jailer's copy of the form, indicating he has understood the condition and received a written copy of it.<sup>3</sup>

### 3. "Good Time" and "Gain Time" for Sentenced Jail Prisoners

There are two statutes dealing with the jailer's authority to deduct time from jail sentences. (Note that a third statute, G.S. 14-265, at one time required a deduction of time spent working on Sunday; this was repealed by Chapter 711 of the 1977 Session Laws, effective July 1, 1978.)

G.S. 14-263 provides for what might be called jail "good time". It classifies jail prisoners into Class A, Class B, or Class C for purposes of "commutation" of their sentences. The best policy probably is to classify all sentenced prisoners in Class A to avoid the burden of due process hearings that may be necessary for a lower classification. Class A jail prisoners receive a deduction of 104 days per year (8-2/3 days per month), which just happens to be close to the amount of "good time" that state prisoners receive for avoiding major misconduct (8.94 days per month (5 N.C. Admin. Code §2B.0101)).

Another statute, G.S. 162-46, allows the jailer to deduct five days per month for "faithful performance of the duties assigned" to a sentenced prisoner, to be forfeited if he escapes or attempts to escape. The jailer is the "sole judge as to the faithful performance of the duties assigned to him." Thus, it is up to the jailer or sheriff to establish rules about when this additional five days per month for "performance of duties" will be granted. (This deduction is similar to what is called "gain time" in the state prisons, which is awarded for work on assigned jobs and ranges from 2.09 to 5.77 days per month; 5 N.C. Admin. Code §2B.0102.)

Both the deduction for "good time" (8-2/3 days per month for Class A prisoners) and the deduction for "gain time" (five days per month for performance of duties) should be regarded as applying to the "end" of the sentence -- to the maximum term if the prisoner has both a minimum and a maximum -- and not to the parole eligibility date. Usually, the parole eligibility date will occur before the release date computed by subtracting all possible time deductions from the maximum term of the sentence. If parole is not approved, however, the jailer or sheriff should determine the prisoner's release date by subtracting his good time, gain time (if any), and time spent in jail before conviction (usually indicated on the court commitment) from the prisoner's maximum term.

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<sup>3</sup>G.S. 15A-1374(a) requires that the Commission give a person a written statement of his parole conditions when it releases him on parole.

#### 4. Work Release of Sentenced Jail Prisoners

Since its inception in 1957, work-release in North Carolina has been under the control of correctional authorities; the sentencing judge has no authority to sentence anyone to work-release, although his recommendation undoubtedly carries considerable weight.<sup>4</sup>

How does work-release operate with respect to sentenced jail prisoners? Based on research and discussions with Mr. David M. Blackwell, Senior Administrative Assistant (and legal advisor) to the Secretary of Correction, there seem to be some fairly clear rules on this.

Keeping in mind that the Secretary of Correction (or the Parole Commission and the Secretary for sentences over five years) must approve all work-release (G.S. 148-33.1), there are two situations the jailer and sheriff should be concerned with:

a. Jail sentence of 30 to 180 days where sentencing judge recommends work-release.

In this situation, the Secretary of Correction has issued blanket authorization to local jailers to release the prisoner on work-release (letter of David M. Blackwell to all local jailers, dated August 5, 1977). However, Mr. Blackwell points out that if the jailer knows of some good reason why work-release is unwise, he should inform the Department of Correction (see names and numbers in next paragraph); the Department will then make the decision whether work-release will be allowed and let the jailer know.

b. Jail sentence over 180 days, or sentence of 30 to 180 days and sentencing judge does not recommend work-release.

The Secretary's policy is that the jailer should obtain authori-

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<sup>4</sup>See the original statute, G.S. 148-33.1, in 1958 Replacement Volume 3B, and compare present G.S. 148-33.1 (1978 Rep. Vol. 3C). A 1977 statute, G.S. 148-32.1(d), suggests that a prisoner serving a 30-to-180-day sentence can be "placed on work-release by the sentencing court pursuant to G.S. 148-33.1(a)", but G.S. 148-33.1(a) makes it clear that the sentencing judge only recommends work-release, and his recommendation is not binding. G.S. 148-33.1(a) provides that the Secretary of Correction "shall authorize immediate work-release privileges ... when (i) it is verified that appropriate employment for the person is available in an area where, in the judgment of the Secretary, the Department of Correction has facilities to which the person may suitably be assigned, and (ii) custodial and correctional considerations would not be adverse to releasing the person without supervision into the free community." Thus, even where the judge recommends work-release, the Secretary of Correction retains the discretion to grant or withhold it. Also, work-release may be granted without any recommendation by the sentencing judge -- by the Secretary if the sentence does not exceed five years, and by the Parole Commission and the Secretary if the sentence exceeds five years (G.S. 148-33.1(a), (b)). The Department's power to grant work-release is similar to its power to classify prisoners in various custody grades; see Goble v. Bounds, 13 N.C. App. 579, aff'd, 281 N.C. 307 (1972).

zation directly from the Department of Correction for work-release of the prisoner when the sentence is over 180 days or the sentence is 30 to 180 days but the sentencing judge does not recommend work-release.

The officials in the Department of Correction to call about authorization for work release are Mr. Harold Lilly (for jails in the western part of the state) and Mr. Frank Gunter (for jails in the eastern part of the state). Both can be reached at 919-733-3155.

The next question is: Who handles the money? The answer appears to be that the Department of Correction must handle it. Where work-release has been properly authorized by the Department of Correction (if it isn't, it's illegal) -- either under the blanket policy regarding 30-to-180-day prisoners who are court-recommended, or directly by the Secretary in other cases -- G.S. 148-33.1(f) provides that the prisoner on work-release must surrender his earnings to the Department of Correction, less standard payroll deductions required by law. A good arrangement would be for the jailer to take the earnings and forward them to the Department to make sure that it is done (see G.S. 148-32.1(d)). The Department then retains the earnings and pays them to the prisoner when he is released, but it may take out certain amounts for the prisoner's job-related and personal expenses, support payments he owes, and restitution and other court-related debts (G.S. 148-33.1(f)).

The person to get in touch with regarding the handling of work-release earnings of jail prisoners is Mrs. Alice Poole, Work-Release Accounting Section, N.C. Department of Correction, 831 W. Morgan St., Raleigh, NC 27603 (919-733-2861). Please note that if the jail prisoner is serving a term over 180 days, the jailer should forward a copy of the court commitment (along with other papers) to the Work-Release Accounting Section.

#### 5. Work Assignments of Sentenced Jail Prisoners

Assigning sentenced jail prisoners to work at housekeeping and similar tasks inside the secured area of the jail would seem to be within the jailer's authority. Although no statute clearly authorizes the jailer to do this, G.S. 162-46 contemplates that the sentenced jail prisoner may have "duties assigned to him." It would be helpful if there were a statute speaking directly to this issue, or at least an Attorney General opinion.

Judges sometimes sentence offenders to jail to work on county property. This is of doubtful legality because the statutes that formerly authorized such sentences have all been repealed (G.S. 148-32, 1974 Rep. Vol. 3C, and G.S. 162-45, -47, and -49, 1976 Rep. Vol. 3D, repealed by 1977 Session Laws, Ch. 711). A jailer who receives a prisoner who has been sentenced to work on county property should probably regard the sentence as giving him the authority to assign the prisoner to such work if there is work to be done and the prisoner can be assigned to it safely; the jailer should make his own evaluation of the security risk.

One statute (G.S. 162-42) still on the books allows the hiring out of sentenced jail prisoners for "employment on the public streets, public high-

ways, public works, or other labor for individuals or corporations." However, this allowed only under two conditions: (1) the board of county commissioners must enact a regulation specifically providing for the hiring out; (2) the hiring out can only be done for the purpose of recouping "costs which [the prisoners] are adjudged to pay".<sup>5</sup> These "costs" presumably include the court costs set by law (G.S. 7A-304) and the jail fee (\$5 per day) imposed on a convicted defendant for time spent "confined in jail awaiting trial" [not for time spent serving a sentence].<sup>6</sup> If the county's regulations so provide, a sentenced jail prisoner can be hired out, and the amount realized thereby is credited toward the costs owed by the prisoner. The prisoner may not be kept in jail beyond the expiration of his sentence for this purpose. Note also that the prisoner who is unable in good faith to pay a fine or costs can obtain an extension of the time for payment or a reduction or revocation of the debt from the court (G.S. 15A-1363, -1364).

#### 6. The Fair Sentencing Act's Provisions Regarding Jails

The Fair Sentencing Act (Chapter 760 of the 1979 Session Laws) is now scheduled to go into effect July 1, 1980; there is talk of postponing it until October 1, 1980. Although most of its provisions do not affect jails, it does change the law regarding "good time" and "gain time". The Act repeals the old statutes (G.S. 14-263 and 162-46) regarding good time and gain time of sentenced jail prisoners [described in Section 3 of this memo]. It amends G.S. 148-13 to authorize the Secretary of Correction to issue regulations regarding "deduction of time ... for good behavior, meritorious conduct, work or study, participation in rehabilitation programs, and the like", affecting all prisoners serving misdemeanor sentences as well as those serving felony terms. (Note that this authority includes both "good time" and "gain time".) The Secretary is required to distribute his regulations regarding such time deductions to all county and district jail administrators.

The Fair Sentencing Act has other provisions affecting the very few felons who are serving their sentences in local jails. Felons sentenced under the present sentencing laws will be subject to the good time and gain time regulations of the Secretary of Correction when the Act goes into effect. Felons sentenced under the new felony sentencing provisions of the Fair Sentencing Act will receive one day of credit for each day they spend in prison or jail without a major infraction of prisoner conduct rules, as well as additional gain time, when granted pursuant to the Secretary of Correction's regulations. They will also be subject to prisoner conduct rules issued by the Secretary, whether they are in state prison or a local jail. These conduct rules "shall clearly state types of forbidden conduct and a copy of the rules shall be given to each convicted [felony] prisoner upon entry into prison or jail." (See G.S. 15A-1340.7 and amended G.S. 148-13 in Chapter 760 of the 1979 Session Laws.)

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<sup>5</sup>G.S. 162-42 also suggests that unpaid fines can be recouped in the same way, although its language is unclear.

<sup>6</sup>G.S. 7A-313.

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