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# Memorandum

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## Service of North Carolina Prison and Jail Sentences: Parole Eligibility, Good Time, and Gain Time

Stevens H. Clarke

THIS MEMORANDUM will review the current laws and rules regarding service of sentences that can be imposed under present North Carolina law. Two terms need to be defined at the outset: "good time"--credit toward service of a sentence for avoiding serious misconduct while in prison; and "gain time"--credit toward service of a sentence for performing work assignments, participation in prison programs, participation in work or study release, and meritorious conduct. By long-standing practice, administrative rule, and present law, good time can be forfeited for specific disciplinary infractions subject to a hearing procedure; but gain time, once earned, cannot be forfeited.<sup>1</sup> The reader should note that good time, gain time, and parole rules are to some extent within the discretion of the Secretary of Correction and the Parole Commission and therefore are subject to change. Special rules on service of sentence apply to certain offenses such as armed robbery; these are covered in section VIII below.

### I. CYO (Committed Youthful Offender) Sentence

If an offender (1) is under 21 when he is sentenced and his offense is not a repeated felony using a deadly weapon<sup>2</sup> or punishable by death or mandatory life imprisonment, or (2) is at least 21 but less than 25 years of age and not convicted of a Class A, B, C, D, E, F, or G felony or a "violent"<sup>3</sup> felony, and if the sentencing judge wishes to impose an active prison sentence, the judge may sentence the offender as a committed youthful offender (CYO). If the offender is under 21, the judge must determine whether the offender will "benefit" from being sentenced as a CYO; if he decides against a

1. G.S. 148-13(d); G.S. 15A-1340.7; 5 N.C. Admin. Code § 2B.0103(a), -(b).

2. CYO sentencing is prohibited for a person convicted under G.S. 14-2.2 of a repeated felony using a deadly weapon.

3. Ch. 531 of the 1983 Session Laws, which amended G.S. 148-49.14 to extend the CYO age limit to 25, does not define "violent."

CYO sentence, he must make a "no benefit" finding on the record. If the judge imposes a CYO sentence, he must impose a single (maximum) prison term<sup>4</sup> that does not exceed (1) 20 years or (2) the statutory maximum for the offense, whichever is less.

A CYO is eligible for parole at any time after he enters prison unless he was sentenced for drug trafficking or for being a habitual offender.<sup>5</sup> If parole is not granted, discretionary good time and gain time are deducted from the prison term toward eventual unconditional release. (Discretionary good time and gain time are earned at rates specified in section VII below.)

Sources: G.S. 14-2.2, G.S. 148-49.14, G.S. 148-49.15; State v. Mitchell, 24 N.C. App. 484 (1975); State v. Niccum, 293 N.C. 276 (1977); State v. Scales, 28 N.C. App. 509 (1976).

## II. Life Sentence

### A. For Felony for Which Sentence Was Imposed Before July 1, 1978

A prisoner sentenced to a life term before July 1, 1978, not as a CYO, is eligible for parole after serving one-fourth of the minimum prison term of his sentence, if any--or, if he has no minimum term, after serving one-fourth of his maximum term. One-fourth of a life term is considered to be ten years if the prisoner's offense was committed before April 8, 1974, and twenty years if committed on or after that date.<sup>6</sup> Discretionary good time is granted toward the ten- or twenty-year parole-eligibility period (see section VII below).

### B. For Felony Committed Before July 1, 1981, for Which Sentence Was Imposed on or after July 1, 1978:

Parole eligibility on a life sentence without a minimum prison term imposed under the Trial and Appellate Procedure Act has been somewhat unclear. The original version of G.S. 15A-1371(a), effective July 1, 1978, provided that "a prisoner serving a term other than one included in a sentence of special probation . . . is eligible for release on parole at any time."<sup>7</sup> In 1979, the North Carolina Attorney General stated that any life sentence without a minimum term made the inmate immediately eligible for parole consideration because of G.S. 15A-1371(a).<sup>8</sup> But this opinion was later modified when the Attorney General said that a sentence without a minimum term

4. The judge may not impose both a minimum term and a maximum term on a CYO. See G.S. 148-49.14; State v. Scales, 28 N.C. App. 509 (1976). Also, the Fair Sentencing Act prohibits minimum terms; see G.S. 15A-1351(b).

5. For drug trafficking [G.S. 90-95(h)] and the status of habitual felon (G.S. 14-7.1 et seq.), CYO sentencing is not prohibited, but the offender is denied the benefit of early parole.

6. G.S. 148-58 (1975 Supp., 1964 and 1974 Rep. Vols.); G.S. 14-2 (1974 Supp.).

7. See 1978 interim supplement.

8. Letter from Attorney General Rufus Edmisten to Henry W. Oxendine, Parole Commissioner, May 14, 1979.

imposed for first-degree murder under G.S. 15A-2000 does not carry eligibility for parole at any time; the Attorney General did not say when parole eligibility does occur on such a sentence.<sup>9</sup> The previous opinion apparently still holds with respect to pre-Fair Sentencing Act life sentences for offenses other than first-degree murder; theoretically,<sup>10</sup> inmates who are serving such sentences are eligible for parole at any time.

An offender with a life sentence and a minimum prison term is eligible for parole after he serves his minimum term or 20 years, whichever is less, minus discretionary good time (see section VII).

C. For Felony Committed on or after July 1, 1981:

The question about parole eligibility on a life sentence with no minimum term was answered, for felonies committed on or after July 1, 1981, by G.S. 15A-1371(a1), which sets parole eligibility at 20 years for such a sentence. (The Fair Sentencing Act removed the option of imposing a minimum term for any felony.<sup>11</sup>)

For Class A, B, and C felonies committed on or after July 1, 1981, the following rules apply:

1. An offender with a life sentence for a Class A or B felony (first-degree murder, first-degree rape, and first-degree sexual offense) is eligible for parole after he serves 20 years; no good-time or gain-time credit is allowed toward the 20 years.<sup>12</sup>

2. An offender with a life sentence for a Class C felony (second-degree murder, first-degree burglary, first-degree arson, etc.) is eligible for parole after he serves 20 years minus discretionary good time. At the current rate of discretionary good time (see section VII)--which could be changed--such an offender could become eligible for parole after he serves as little as 10 years.

Sources: G.S. 15A-1371(a), G.S. 15A-1371(a1), G.S. 15A-1355(c), G.S. 148-13, 5 N.C. Admin. Code §§ 2B.0101 through 2B-0105.

9. Letter from Attorney General Rufus Edmisten to Judge E. Maurice Braswell, April 30, 1982.

10. This parole eligibility is theoretical only. The Parole Commission does not normally parole any life-sentence inmate in this category until he has served 20 years minus good time and credit for time served in pretrial detention (but this policy does not appear in any published regulations). Memorandum from Ben Irons, Senior Administrative Assistant, Department of Correction, to the author, January 19, 1984.

11. See G.S. 15A-1351(b).

12. The statutes are somewhat contradictory on this point. G.S. 15A-1355(c), which requires day-for-day credit toward service of a felony sentence subject to the FSA pursuant to G.S. 15A-1340.7, states: "The provisions of this subsection do not apply to persons convicted of Class A and Class B felonies . . . ." G.S. 15A-1340.7 is part of G.S. Ch. 15A, Art. 81A; G.S. 15A-1340.1(a), at the beginning of Article 81A, provides: "This Article [which includes day-for-day good time provisions] shall apply to the sentencing of all persons convicted of felonies, other than Class A or Class B felonies, that occur on or after July 1, 1981." (Emphasis added.) But G.S. 148-13(b) provides:

III. Non-CYO Misdemeanant, or Non-Life, Non-CYO Felon  
Not Subject to Fair Sentencing Act (FSA)

A. Sentenced Before July 1, 1978

The offender is eligible for parole after he serves one-fourth of his minimum prison term, if any--or, if he has no minimum term, one-fourth of his maximum term; the parole-eligibility period is further reduced by discretionary good time (see section VII of this memo).

B. Sentenced on or after July 1, 1978

1. If the offender has no minimum prison term, he is eligible for parole at any time.

2. If the offender has a minimum prison term and his maximum term is not less than 30 days but is less than 18 months, he is eligible for parole after he serves the shortest of these three periods:

- (a) The minimum prison term;
- (b) One-fifth of the statutory maximum prison term for his offense;
- (c) One-third of the maximum prison term.

Periods (a) and (b) [but not (c)] are further reduced by discretionary good time (see section VII).

3. If the offender has a minimum prison term and his maximum term is less than 30 days or is 18 months or more, he is eligible for parole after serving his minimum term or one-fifth of the statutory maximum prison term for his offense, whichever is less, minus discretionary good time (see section VII).

4. Discretionary good time and gain time (see section VII) are deducted from the maximum prison term to determine the offender's date of unconditional discharge if he is not paroled.

Sources: G.S. 148-58 (1974 Rep. Vol., 1975 Supp.), G.S. 14-2 (1974 Supp), G.S. 148-58 (1964 Rep. Vol.), G.S. 15A-1371, G.S. 15A-1355(c), 5 N.C. Admin. Code §§ 2B.0101 through 2B.0105.

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With respect to prisoners who are serving prison or jail terms for offenses not subject to Article 81A of Chapter 15A of the General Statutes and prisoners serving a life term for a Class C felony, the Secretary of Correction may, in his discretion, issue regulations regarding deductions of time from the terms of such prisoners for good behavior, meritorious conduct, work or study, participation in rehabilitation programs, and the like. [Emphasis added.]

And as has just been explained, Class A and B felonies are not subject to Art. 81A of Ch. 15A. However, in my opinion, the 1979, 1980, and 1981 amendments to G.S. 15A-1355(c) and G.S. 148-13 were not intended to authorize good-time or gain-time deductions toward parole eligibility with regard to a Class A or B life sentence. In any event, if the Secretary of Correction does have good-time discretion with respect to Class A or B parole eligibility, he has chosen not to exercise it; see 5 N.C. Admin. Code § 2B.0102(b).

IV. Non-FSA Felony Maximum Sentences of  
18 Months or More: Mandatory Parole

An offender who is serving a maximum term of at least 18 months for a felony must be paroled at least six months before he completes his maximum term (minus discretionary good time and gain time) unless (1) he is subject to probation after release, (2) he is being re-paroled after an earlier parole was revoked, or (3) the Parole Commission finds that danger to the public or the offender would result from the early parole.

Source: G.S. 15A-1371(f).

V. Non-CYO, Non-Life Felon Subject to FSA  
(Felony Committed on or after July 1, 1981)

Under the FSA, a single prison term is imposed. The full term is served minus day-for-day good-time credit for avoiding serious misconduct and minus gain time at statutory rates of two, four, or six days per month, which must be granted for specific types of work assignments, program participation, and work or study release. Good time can be forfeited for misconduct, but gain time cannot. Up to 30 days per month of additional gain time for meritorious conduct, work in emergency situations, and the like--known as "emergency" or "meritorious" gain time--may also be granted toward FSA prison terms.

The discretionary authority to grant good time and gain time described in section VII of this memo does not apply to FSA prison terms, except for parole eligibility on a Class C life sentence as described in section II above.

If his prison term is 18 months or more, the felon subject to a non-life, non-CYO FSA sentence must be released on "re-entry parole" 90 days before his term expires, less good-time and gain-time credit. This parole entails very limited conditions; it may be revoked, and if so the felon must then serve 90 more days, minus day-for-day good time and any gain time received, before unconditional release from prison.

Jeff Williams and Ken Parker of the Department of Correction have developed a formula to estimate the time that an inmate with an FSA sentence will actually serve. This formula is an estimate, not a guarantee. It is based on (a) the average amount of gain time and good time earned and (b) the average amount of good time lost for prison misconduct during the first seven months of 1983. It does not take into account the "sentence adjustments" that were granted (in the form of emergency gain time) in response to 1981 legislation<sup>13</sup> beginning in June 1981 because these were discontinued in September 1983. The formula is:

$$PTS = 0.8488 (SL/2 - JC) - 0.2390^*$$

where PTS = estimated prison time served in years, SL = sentence length in years, and JC = jail credit (for pretrial detention) expressed in years.

\*NOTE: The .2390 should be left out for sentences less than 18 months.

13. The authority for the sentence adjustments was Res. 33 of the 1981 Session Laws.

Table 1 gives some examples of estimated time served on FSA sentences, including the presumptive sentences for felony classes C through J, assuming that the prisoner receives re-entry parole (if his term is 18 months or more) and no jail credit. [For a life sentence subject to the FSA, see section II(C).]

The estimated percentage of an FSA sentence actually served, as the examples show, is about 40 per cent for sentences of nine years or more and ranges from about 30 per cent to nearly 40 per cent for sentences from two to nine years. (The percentage served is somewhat higher--about 42 per cent--for a one-year sentence because sentences under 18 months do not receive the benefit of 90-day re-entry parole.<sup>14</sup>) For sentences of 18 months to about nine years, the estimated percentage served increases as the length of the sentence increases because re-entry parole has a greater proportional effect on short sentences than on longer ones.

Sources: G.S. 15A-1340.7, G.S. 15A-1380.1, G.S. 15A-1380.2, G.S. 148-13.

Table 1

Estimated Time Served on FSA Prison  
Sentences Based on Department of  
Correction Formula

| FSA<br>Class | Presumptive<br>Sentence<br>in Years | Estimated Time To Be Served*<br>Years | (Months) | Estimated Percentage<br>of Sentence To Be Served |
|--------------|-------------------------------------|---------------------------------------|----------|--|
| C            | 15                                  | 6.13                                  | (74)     | 41%  |
| D            | 12                                  | 4.85                                  | (58)     | 40%  |
| E            | 9                                   | 3.58                                  | (43)     | 40%  |
| F            | 6                                   | 2.31                                  | (28)     | 39%  |
| G            | 4.5                                 | 1.67                                  | (20)     | 37%  |
| H            | 3                                   | 1.03                                  | (12)     | 34%  |
| I            | 2                                   | .61                                   | (7)      | 31%  |
| J            | 1                                   | .42                                   | (5)      | 42%  |

Other FSA Sentences:

| Sentence | Estimated Time Served* |
|----------|------------------------|
| 20 years | 8.25 years             |
| 30 years | 12.49 years            |
| 40 years | 16.74 years            |
| Life     | See section II of text |

\*Estimates take into account 90-day parole for those eligible and assume jail credit = 0. To adjust for jail credit, express jail credit in years, multiply by 0.8488, and subtract the result from the appropriate time-served figure in the table.

## VI. Jail Credit

G.S. 15-196.3 provides that all periods of time to be served before eligibility for parole or unconditional release from prison must be further reduced by credit for pretrial detention (jail) time and other time spent in institutional confinement "as a result of the charge that culminated in the sentence."<sup>15</sup> This is true of both FSA and non-FSA sentences.<sup>16</sup> G.S. 15-196.4 requires that credit for such time be determined by the presiding judge and transmitted by the clerk of court to the defendant's custodian.

## VII. Discretionary Good Time and Gain Time for Non-FSA Sentences

The Department of Correction has authority under G.S. 148-13 to give credit toward the service of prison sentences for good behavior, meritorious conduct, participation in work and study programs, and the like. This authority has been exercised by granting "good time" (credit for avoiding serious misconduct) and "gain time" (credit for meritorious conduct and participation in work and study programs). By long-standing practice and current rules, good time can be forfeited for specific disciplinary infractions subject to a hearing procedure, while gain time, once earned, cannot be forfeited.<sup>17</sup> Until recently, the department granted such credit only toward service of the inmate's maximum prison term--i.e., only toward his unconditional release ("max-out") date, and not toward his eligibility for discretionary parole. But 1981 legislation empowered the department to grant such credit toward parole eligibility.<sup>18</sup> Since that legislation was enacted, the department has granted good time, but not gain time, toward parole-eligibility periods, including the 20-year parole-eligibility period on a Class C life sentence; this has been done retroactively as well as prospectively. There is one exception: The department denies good time toward the one-third-of-term parole-eligibility period that applies to prison terms of 30 days to 18 months (see section III(B)(3) above).

Since April 1, 1983, the department's discretionary good-time rate has been one day deducted from the prison or jail term for each day the inmate spends in custody without a major infraction of conduct rules.<sup>19</sup> Note that this rate could be changed at any time. (Before February 1, 1982, the discretionary good-time rate was nine days per month served; from February 1, 1982, to March 31, 1983, the rate was 12 days per month served.) The gain-time rate is usually two, four, or six days per month depending on the work assignment. Additional "emergency" gain time of up to 30 days per month may be granted for meritorious conduct.

15. G.S. 15-196.1.

16. G.S. 15A-1340.7(a).

17. 5 N.C. Admin. Code § 2B.0103(a), -(b).

18. 1981 Session Laws, Chs. 571, 1127, amending G.S. 15A-1355(c).

19. The Department of Correction's regulations regarding discretionary good time speak of good-time credit "at the rate of the one day deducted from the inmate's prison or jail term for each day the inmate spends in custody without a major infraction of prison conduct rules . . ." [5 N.C. Admin. Code § 2B.0102(a)], and the Fair Sentencing Act [G.S. 15A-1340.7(b)] has an identical provision. In practice, the department first determines a projected release date on the basis of admission date, length of prison term, and good time credited in advance; that date is later adjusted for gain time earned and loss of good time for misconduct (if any).

Note that these remarks do not apply to FSA prison terms except for Class C life sentences (see section II(C) above). Day-for-day good time is mandatory with respect to FSA prison terms, and gain time must be granted at statutory rates that depend on the type of work assignment the inmate receives, although the Department of Correction retains discretion to grant "emergency" gain time.

Sources: G.S. 15A-1355(c), G.S. 148-13; 5 N.C. Admin. Code §§ 2B.0101 through 2B.0105.

#### VIII. Special Offenses: Armed Robbery, Burglary, Repeated Felony with Deadly Weapon, Being a Habitual Felon, and Drug Trafficking

A. Offenders convicted of armed robbery, first- or second-degree burglary, a repeated felony using a deadly weapon, or being a habitual felon who are not CYOs and whose offenses were committed on or after July 1, 1981, must receive a sentence of at least 14 years and must serve at least seven years. Apparently, this seven years must be reduced by gain time if the inmate earns it by his assigned work.<sup>20</sup>

B. Drug-trafficking offenses carry mandatory minimum prison terms. For drug-trafficking offenses committed on or after July 1, 1981, although early parole is specifically prohibited for CYOs, day-for-day good time and gain time at statutory rates (see section V) are required by the FSA.<sup>21</sup>

C. The Safe Roads Act of 1983 establishes various minimum terms of imprisonment for certain levels of the offense of driving while impaired (DWI). The act provides: "No good time or gain time may be credited to reduce the minimum or specified term of imprisonment." Furthermore, parole is prohibited for any minimum or specified term of imprisonment, and the judge

20. G.S. 14-87(d) provides: "...[W]ith the exception of persons sentenced as committed youthful offenders, a person convicted of robbery with firearms or other dangerous weapons shall serve a term of not less than seven years in prison, excluding gain time granted under G.S. 148-13." (Emphasis added.) Similar provisions can be found in G.S. 14-52 (regarding first- and second-degree burglary), G.S. 14-2.2 (regarding a repeat felony using a deadly weapon), and G.S. 14-7.6 (regarding habitual felons). The granting of gain time for work is mandatory under the FSA. G.S. 148-13(d), which applies to FSA sentences, provides: "Gain time credit may be granted for meritorious conduct and shall be granted for performance of work inside or outside the prison or jail. Gain time credit earned pursuant to regulations issued under this subsection shall not be subject to forfeiture for misconduct." (Emphasis added.) The statute goes on to indicate the specific rates of gain time to be granted for various types of work assignments.

21. What about good time and gain time for the mandatory minimum prison terms for drug-trafficking offenses committed between July 1, 1980, when the drug-trafficking law took effect, and June 30, 1981? The first version of the drug-trafficking law [G.S. 90-95(h)(5), 1981 Rep. Vol. 1C, p. 700] provides: "Notwithstanding any other provision of law, except as provided in G.S. 90-95(h)(6) [which allows below-minimum prison terms when the offender assists the state in prosecuting accomplices], any person who has been convicted of a violation of this subsection [i.e., drug trafficking] shall serve the applicable minimum prison term provided by this subsection before either unconditional release or parole." This provision apparently prohibits granting any good time or gain time toward the mandatory minimum prison term. However, the Department of Correction has been granting good time toward these mandatory minimums on the advice of the Attorney General's office.



may not give credit toward the term for the first 24 hours of time spent in incarceration pending trial.<sup>22</sup>

#### IX. Special Probation ("Split Sentence")

Probation is a prison sentence suspended subject to certain conditions. Special probation includes the condition that the defendant serve a short period in prison or jail--up to six months or one-fourth the statutory maximum for the offense, whichever is less. This short period is part of the term of probation and may be imposed either as a single block of time or in noncontinuous periods such as weekends; it may not be shortened by good time or gain time.

Sources: G.S. 15A-1351(a); G.S. 15A-1343(b1)(3); G.S. 15A-1355(c).

#### X. Emergency Parole to Reduce Prison Population

G.S. 148-4.1, effective July 1, 1983, requires the Secretary of Correction, whenever he determines that the prison population must be reduced "to a more manageable level," to direct the Parole Commission to release an appropriate number of prisoners on parole. Under this emergency provision, inmates not sentenced subject to the FSA must be eligible for parole under G.S. Ch. 15A, Art. 85 (the discretionary parole statute) or G.S. Ch. 148, Art. 3B (the CYO statute) before they can be paroled. Inmates subject to the FSA may be paroled under G.S. 148-4.1 as early as six months before the date when they would otherwise be released and three months before the date of their 90-day parole authorized by G.S. 15A-1380.2.

#### XI. Jail Sentences

The above rules regarding parole, good time, and gain time apply to jail sentences no less than prison sentences. (The Institute's Jail Law Bulletin will soon carry an article on this subject.) The Parole Commission's power to parole (unless otherwise limited by statute) applies to all sentences of imprisonment by state courts. However, a court is not authorized to sentence an offender to jail as a CYO; G.S. 148-49.14 limits CYO status to Department of Correction sentences.

The Secretary of Correction is responsible for issuing, and has issued, good-time, gain-time, and prisoner-conduct regulations that apply to inmates who are serving sentences in jails. Jailers who do not have copies of these regulations should write to the Secretary of Correction.

Sources: G.S. 143B-266(a), G.S. 148-13(c).

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22. G.S. 20-179(p).

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