

## Report on Public Policy Position

**Name of section:**

Prisons and Corrections Section

**Contact person:**

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**Regarding:**

Restoration of Earned Credits for Prisoners

**Date position was adopted:**

March 21, 2009

**Process used to take the ideological position:**

Position adopted after discussion and vote at a scheduled meeting.

**Number of members in the decision-making body:**

15

**Number who voted in favor and opposed to the position:**

12 Voted for position

0 Voted against position

0 Abstained from vote

3 Did not vote

**Position:**

See below

## STATEMENT OF THE PRISONS &amp; CORRECTIONS SECTION

## RESTORATION OF EARNED SENTENCE CREDITS FOR PRISONERS

Disclosure pursuant to Administrative Order 2004-1: The Prisons and Corrections Section is a voluntary section of the State Bar, not the State Bar itself. The position expressed here is that of the Section. The State Bar has no position on the restoration of earned sentence credits for prisoners. The Prisons and Corrections Section has a membership of approximately 140. The Section's governing body, a Council elected by the membership, is composed of 15 voting members. This policy position was adopted, after due notice, at a meeting of the Section's Council on March 21, 2009. The vote was 12 yes, 0 no, 0 abstention.

## Position

In 1998, Michigan enacted legislation, known as "truth in sentencing", which requires that all prisoners serve every day of their minimum sentences, thereby prohibiting any form of earned credit for good conduct, work or participation in treatment, academic or vocational programs. It is the position of the State Bar Prisons and Corrections Section that a system of earned sentence credits should be restored. This system should be given immediate effect and applied, prospectively, to all prisoners currently serving indeterminate sentences who are not already eligible for earned credits because of their conviction dates, as well as to everyone sentenced to an indeterminate term in the future. It is further the position of the Section that judges should be required to place on the record at sentencing the extent to which earned credits may affect the service of the minimum sentence.

## Summary of Findings

The Section's position is based on the following findings:

1. There is no evidence that permitting earned credits presents a risk to public safety.
2. There are alternate means of promoting transparency in sentencing.
3. Permitting earned credits is a common correctional practice nationally and on the county level in Michigan.
4. The opportunity to earn sentence credits provides a significant incentive to prisoners who currently are penalized for misconduct but rarely rewarded for positive efforts.
5. Permitting earned credits does not require the release of any particular prisoner, make institutional management more difficult or interfere with the discretion of the parole board. On the contrary, it provides the Department of Corrections with a useful tool for managing institutional behavior and promoting participation in rehabilitative programs.
6. The restoration of earned credits would significantly help reduce the prison population and save taxpayers tens of millions of dollars.

## Analysis

### History

For decades, Michigan, like most states, granted prisoners generous amounts of credit for good behavior, commonly referred to as “good time.” Regular good time was awarded on a progressive basis. The number of days per month increased with the number of calendar years served. By the 20<sup>th</sup> year, regular good time could equal 15 days a month. In addition, special good time could be awarded in amounts up to half the regular credit. Thus, a 40-year minimum could be served in fewer than 16 years.

In 1978, the voters amended the Michigan Constitution to prohibit the award of good time to reduce the minimum sentence. The actual time a defendant would have to serve on a given minimum increased from 30-300%, depending on the amount of good time that might have been earned.

By 1982, it became apparent that the elimination of good time was contributing to increasingly overcrowded prisons. Therefore, the legislature restored a limited amount of good conduct credit in the form of five regular and two special disciplinary credit days per month, or up to 84 days a year. Because some people were not eligible to earn disciplinary credits and others forfeited credits for misconduct, on average, Michigan prisoners served 88 percent of their judicially imposed minimum sentences.

In the 1990s, the federal government began encouraging “truth in sentencing” by conditioning the award of federal prison construction funds to the states on the requirement that *violent* offenders serve 85 percent of their sentences. The federal system itself permits sentence reductions of up to 15 percent. Because Michigan already met the standard, it was awarded \$33 million in federal VOI/TIS (Violent Offender Initiative/Truth in Sentencing) funds in 1997.

Nonetheless, in 1998, Michigan prospectively eliminated disciplinary credits and required all prisoners to serve 100 percent of their minimum sentences. The consequence was to lengthen the time served by everyone, regardless of the nature of their offenses, whose good conduct in prison would otherwise have allowed them to earn modest amounts of credit. For instance, a five-year minimum sentence that could have been served in four years and one month with disciplinary credits now requires every day of five years.

When truth-in-sentencing was first proposed in 1994, the MDOC estimated that the elimination of disciplinary credits would require 2,268 beds within 10 years. Data about the accuracy of that projection is not available. However, the Citizens Alliance on Prisons and Public Spending (CAPPS) estimates that if the average sentence of 7.5 years was reduced to 6.1 years and 3,000 people who earned the maximum amount of disciplinary credits (84 days per year) were released when they first became eligible, the savings would exceed \$100 million.

Proponents of the change did not assert that it would increase public safety. The purpose was to ensure that victims and the general public have a clear understanding of what a sentence actually means.

### Public Safety

No evidence has been presented that either awarding earned credits poses any risk to public safety. By definition, such incentives are available only to those people who earn them by positive conduct. The average minimum

sentence in Michigan in 2005 was 7.5 years. There is no basis for believing that if people actually served, on average, 6.4 years, crime rates would be impacted.

In fact, a substantial body of research indicates that keeping people incarcerated longer does not reduce recidivism and may actually increase it. For instance, in 1999, Gendreau, Goggin and Cullen conducted a meta-analysis that included 23 studies of the impact of more versus less time in prison.<sup>1</sup> In 2002, Smith, Goggin and Gendreau published a follow-up meta-analysis that included 26 additional studies.<sup>2</sup> Neither analysis found any deterrent effect. On the contrary, longer length of stay was associated with a small increase in recidivism.

Song and Lieb reviewed four studies of whether, after controlling for other factors, length of sentence affects recidivism.<sup>3</sup> Overall, either there was no substantial relationship between time served and recidivism rates or rates increased with longer sentences. Three studies of early release programs undertaken to relieve prison overcrowding in California, Washington State and Illinois concluded that releasing people anywhere from 3.5 to 6 months before their scheduled parole dates did not increase recidivism.<sup>4</sup>

Most recently, Washington State researchers analyzed the impact of increasing the amount of earned release credits available to certain prisoners.<sup>5</sup> In Washington, those convicted of violent and sex offenses could earn up to 15 percent off their sentences and non-violent offenders could earn 33 percent. In 2003, the law was changed to increase potential earned time to 50 percent for selected offenders, while decreasing it to 10 percent for violent and sex offenses. The researchers concluded:

We find that the law has no statistically significant effect on violent criminal recidivism, while we estimate a statistically significant *decrease* for non-violent crimes. Overall, 39 percent of offenders released under the new law are convicted for a new felony within three years compared with 42 percent of offenders prior to the law's enactment.

Since the implementation of the new law, offenders spend an average of 63 fewer days in prison, resulting in an average cost savings of \$6,155 per person. Due to the estimated reduction in felony crime, we also

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<sup>1</sup> Gendreau, Paul, Goggin, Claire and Cullen, Francis T., *The Effects of Prison Sentences on Recidivism*, Ottawa: Solicitor General of Canada (1999).

<sup>2</sup> Smith, Paula, Goggin, Claire and Gendreau, Paul, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences*, Ottawa: Solicitor General of Canada (2002). The authors note that even slight increases in recidivism can be very costly when they occur on a large scale and suggest that excessive incarceration may be fiscally irresponsible for that reason.

<sup>3</sup> Song, Lin and Lieb, Roxanne, *Recidivism: The Effect of Incarceration and Length of Time Served*, Washington State Institute for Public Policy (1993); <http://www.wsipp.wa.gov>.

<sup>4</sup> See also Kassebaum, Gene, Davidson-Coronado, Janet, Perrone, Paul and Allen, Joe *Parole Decision Making in Hawaii*, Social Science Research Institute, University of Hawaii at Manoa and Research and Statistics Branch, Crime Prevention and Justice Assistance Division, Dept. of the Attorney General (August 2001), [www.cpja.ag.state.hi.us](http://www.cpja.ag.state.hi.us), at 3; Kellam, Leslie and Hayes, Michael, *2003 Releases: Three Year Post Release Follow-up*, New York State Department of Correctional Services, Division of Program Planning, Research & Evaluation; Langan, Patrick and Levin, David, *Recidivism of Prisoners Released in 1994*, U.S. Department of Justice, Bureau of Justice Statistics (Washington, D.C., 2002).

<sup>5</sup> Drake, E.K. and Barnoski, R., *Increasing Earned Release from Prison: Impacts of 2003 Law on Recidivism and Criminal Justice Costs*, Washington State Institute for Public Policy, (Olympia, 2008), [www.wsipp.wa.gov](http://www.wsipp.wa.gov).

calculate benefits of \$4,588 per person for future crimes avoided and taxpayer costs saved – a total savings of \$10,743 per offender.

### Transparency

As its colloquial name suggests, the purpose of “truth in sentencing” is transparency in the criminal justice process. However, this can be achieved without the high fiscal and social costs of lengthening time served. One method is to have the judge state on the record at sentencing how much credit the defendant might be able to earn. The State of New Jersey has a court rule entitled “Statement of Estimated Real Time to be Served” that requires the sentencing judge to do just that.

### Common Correctional Practices

*Other Jurisdictions.* While no systematic survey of every state is available, most have some form of earned credit. Some have multiple types of credit and some still award very generous amounts, especially for nonviolent offenders. For example:

- Illinois has differing amounts of statutory good time for nonviolent and violent offenses, as well as meritorious good time, supplemental meritorious good time and earned good conduct credit for program participation. While people convicted of murder must serve 100 percent of their determinate sentences, those convicted of other violent crimes must serve 85 percent and those convicted of nonviolent crimes must serve only 50 percent.
- Depending on how they are classified, Indiana prisoners can earn as much as one day of credit for each day served.
- Depending on their classification, Texas prisoners can earn up to 25 days of good conduct credit and 15 days of diligent participation credit per 30 days served.
- New Jersey awards four months per year of commutation credits, one day of work credit for every 5 days worked and five days per month of minimum custody credit in every year after the first.
- The Florida system includes basic gain time, meritorious gain time and incentive gain time.
- California gives worktime credit of six months for each six months of full-time work. Prisoners who do not have a full-time assignment available may earn up to four months reduction for each eight months served.
- While Minnesota and Wisconsin, both determinate sentencing states, do not award disciplinary credits, they have a presumption of release after a portion of the sentence has been served. Absent institutional misconduct, Minnesota prisoners are placed on supervised release after serving two-thirds of their sentence; Wisconsin prisoners must spend at least 25 percent of their sentences in community supervision, absent misconduct.

(For more detail, see [www.balancingourpriorities.org](http://www.balancingourpriorities.org).)

Increasing the availability of earned credit has become a common way for states to control spiraling prison populations. Just since 2003, Colorado, Iowa, Kentucky, Mississippi, Rhode Island and Washington have all adjusted their earned credit systems to reduce the length of stay of at least some categories of offenders. Rhode Island, with approximately 4,000 total prisoners, expects to save \$8 billion over five years.

*Michigan Counties.* Under MCL 51.282, Michigan’s sheriffs are authorized to award jail inmates one day of good time for each six days of the sentence. Sheriffs routinely use that authority to help control county jail populations and promote compliance with jail regulations. As a result, a person convicted of felonious assault who receives a year in the county jail can earn 54 days of credit. If the same person receives a prison term with a one year minimum, he or she can earn no credit. There is no apparent rationale for viewing earned credits as “untruthful” when applied to prison sentences but not to jail sentences.

### Prisoner Incentives

In Michigan, while misconduct is quickly punished, there are virtually no rewards for positive achievements. Opponents of earned credits suggest that prisoners are supposed to behave appropriately and participate in programs and that they should not be rewarded for merely doing what is expected of them. However, that position runs counter to common knowledge about learning and behavior modification. Adults, children and animals all respond better to positive reinforcement than to punishment. We expect children to earn good grades and employees to do their jobs, but we still reward children who bring home good report cards and give merit raises to employees who do their jobs well.

Prisoners are incarcerated because they failed to meet societal expectations, often despite receiving plenty of punishment throughout their lives. If one goal of incarceration is rehabilitation, opportunities for positive reinforcement are needed. Because of security concerns, these opportunities are very limited in the prison environment. Release is, of course, the ultimate incentive. Earned credits can play a meaningful part in encouraging prisoners to behave responsibly, work hard at prison jobs, engage in treatment and complete academic and vocational programs that will ultimately benefit not only them but the communities to which they return.

### Rationale for Section Position

Since earned credits merely give the parole board jurisdiction sooner, they do not require that any particular prisoner be released. In the absence of evidence that reductions in the length of time served increase recidivism to any extent, earned credits can only have a positive impact.

They serve to reinforce desirable behavior by prisoners and provide corrections personnel with an additional management tool. They can play a significant role in reducing the prisoner population and, thus, the corrections budget.

Earned credits are routinely awarded by many states, the federal prison system, and sheriffs in all 83 Michigan counties. It is not reasonable to assume that all these entities are somehow “untruthful” and that eliminating all earned credits is the only way to keep the sentencing process transparent. Requiring sentencing judges to place on the record a statement of the maximum amount of credit the defendant may be able to earn is a viable, cost-free alternative.

Eligibility for earned credits should begin with current prisoners, as opposed to just those sentenced in the future. While it may be unduly complicated to calculate earned credits for time already served, there is no reason they cannot be earned by current prisoners going forward.<sup>6</sup> Since earned credits affect parole eligibility but do not

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<sup>6</sup> Excepting, of course, those whose sentences were imposed so long ago that they are entitled to earn disciplinary credits or even good time under prior laws.

change the actual sentence, there would be no violation of separation of powers. If this approach is justifiable and beneficial, it should be given effect as soon as possible. To the extent that it only results in cost-savings once someone has reached their earliest release date, it is important to start the accumulation of credits as soon as possible in order not to delay potential fiscal benefits more than necessary.