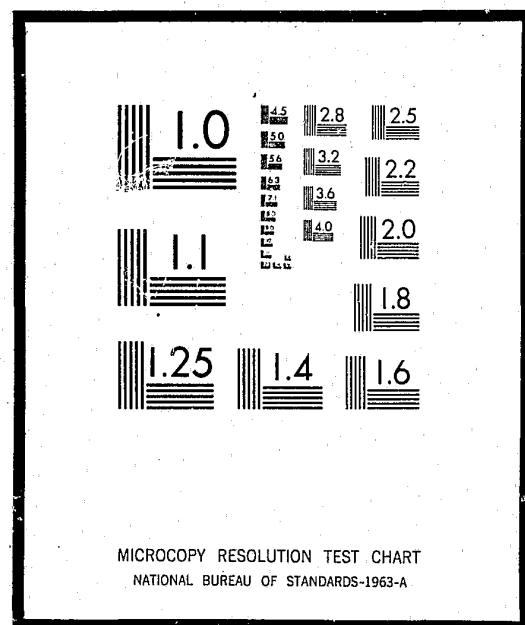


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## A NATIONAL SURVEY OF GOOD TIME LAWS AND ADMINISTRATIVE PROCEDURES

RESEARCH REPORT NO. 17

JUNE 1973



RESEARCH AND DEVELOPMENT DIVISION

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## PREFACE

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A NATIONAL SURVEY OF GOOD TIME LAWS  
AND ADMINISTRATIVE PROCEDURES

by James Keith Anderson

SUMMARY

Purpose

The purpose of this study is to survey and compare the similarities and differences of the statutes and of the correctional policies governing the use of good time allowances in adult correctional facilities for felony offenders throughout the nation.

Methods

A questionnaire was developed in order to obtain information concerning the administration of good time in each state department of corrections. The questionnaire was sent to each department of corrections in the United States, the District of Columbia, and Guam. The data collected and the review of the good time statute of each state provide a legal and administrative comparison of the state's good time laws and administrative procedures used for granting, forfeiting, and restoring good time allowances.

A second questionnaire was also developed in order to obtain the attitudes of officials working in the criminal justice field in Texas concerning the use of good time allowances in the Texas Department of Corrections. The questionnaire was sent to each of the district court judges, the district attorneys, and the sheriffs of the 100 largest counties in population in Texas. The questionnaire was also

sent to each field parole officer in Texas including the institutional parole officers at the Texas Department of Corrections. The questionnaire was also sent to correctional officials and inmates at the Texas Department of Corrections.

The data collected from the questionnaire sent to the criminal justice officials, the correctional officials, and the inmates were analyzed and summarized in table form in Chapter II.

The legal aspects of Due Process and Equal Protection rights of inmates concerning the granting, forfeiting, and restoring of good time allowances were also discussed. A brief background of the legal rights of inmates concerning the granting of good time allowances is presented. Federal and state court decisions concerning the administrative procedures required for prison disciplinary hearing and the forfeiture of good time allowances are reviewed.

#### Findings

1. From the survey of each state department of corrections, it was found that forty-six states, the District of Columbia, and Guam have statutes providing for good time allowances for adult felony offenders.

2. Only California, Hawaii, Pennsylvania, and Utah do not have a statute providing for good time allowances.

3. The statutes and administrative policies vary from state to state in the amount and applicability of good time allowance reductions. There are four basic procedures which govern the method by which good time allowances are applied

to the offender's sentence. They are: (1) good time may be allotted in a "graduated" reduction under which an inmate receives increased allowances with each year served; (2) good time may be credited at a "flat" rate of reduction in which a certain amount of good time is credited to an offender's sentence depending on the length of the maximum sentence; (3) good time allowances are granted at a "fixed" rate in which a specified amount of good time is granted to every inmate regardless of the length of the sentence or time served; and (4) the graded or classification system in which inmates placed in a particular grade earn a certain amount of good time for that grade.

4. The eligibility of an offender to earn good time allowances is often arbitrarily determined by administrative policy rather than by statutory provision. There exists no uniform statute or administrative policy for granting good time allowances to offenders in various stages of custody or conditions of incarceration.

5. Most state departments of corrections do not provide the necessary due process procedural guarantees required when forfeiting an offender's good time allowances. The statutes of most states do not define the procedures to be followed in a forfeiture hearing.

6. The correctional philosophy of granting good time allowances to an inmate for good behavior has been restructured to become a negative approach in which the loss of good time occurs as a punishment for misconduct. The granting of good

time allowances has become an automatic bookkeeping procedure to facilitate the inmate records keeping of the department of corrections and the parole board.

#### Recommendations

The procedural requirements for prison disciplinary hearings should not be too restrictive. To do this would seriously impair the need for efficient and speedy disciplinary action. There are, however, certain requirements which should be applied to a disciplinary hearing in which the forfeiture of good time is imposed.

1. The first requirement is the advance notice in writing of the charges against the accused inmate and the opportunity to prepare a defense. The advance notice should include an explanation of the charges and the date and time at which a hearing will take place.
2. A second requirement is a hearing before an impartial committee. The members should be senior correctional officers or administrators. In no instance should an officer who brought the charges or investigated the charges be on the committee. An opportunity should be given to the inmate to be heard at the hearing and to respond to the charges against him. Because the charges against the inmate could result in what the courts have described as a "grievous loss," he should also be given an opportunity to confront and cross examine witnesses and present evidence in his behalf.

3. A third requirement is that a record of the discipline proceeding should be kept which should include testimony presented,

the decision of the board, and an explanation of the decision which was made by the board. An automatic review of the committee's decision should be made by the warden and the director of corrections to determine the suitability of the punishment, especially if a forfeiture or denial of good time occurs.

4. Access to the courts to gain judicial review of administrative decisions has been limited by the inmates' relative isolation and inability to obtain formal legal counsel. The opportunity should exist for all inmates to seek judicial review for grievances, particularly those concerning the forfeiture or denial of good time allowances.

5. An additional requirement is the opportunity of the accused inmate to select an inmate representative to assist him at the hearing. If possible legal counsel should be provided. This, of course, would be one of the most difficult elements of due process requirements because of the practical problems involved in obtaining counsel for all disciplinary hearings. The practical considerations of manpower and money would preclude the possibility of legal counsel for all but the most serious cases. There are instances when the charges against the inmate constitute a criminal act which could be prosecuted in the courts. It is necessary then for him to have legal assistance in the investigation of his case and adequate preparation of a defense.



## CHAPTER I

### INTRODUCTION

In society today there exists a rising level of fear and frustration brought about by the continual increase in the crime rate, particularly violent crimes. Ritual slayings, terrorists attacks, and criminal assaults on innocent people occur daily with no apparent logical pattern or rational explanation.

Criminal law and the society in which it exists often appear to be functioning in separate realms of reality. Juries in Texas seemed to have vented their fear and frustration by handing out inordinately long sentences of 300 to 3000 years to offenders convicted of violent crimes (Houston Post, March 31, 1973). Responses such as this may momentarily alleviate mounting frustration and channel society's collective hostilities, but it fails to take into consideration the reality of our nation's correctional system and the statutes which govern the treatment of offenders.

Society's response to deviant behavior and the aims of punishment have been consistently marked by a high degree of public and individual ambivalence. Because

of this we have developed a system of substantive and procedural criminal law which is more complex than most other common law nations. Add to this the hysterical, piece-meal legislation of politicians reacting to the public's cries for "law and order" and there exists a quagmire of penal legislation. Our penal codes, however, simply do not meet the objectives for which they were intended. Jerome Hall, an imminent legal scholar, has stated that:

Especially unfortunate is the extreme disorganization of the treatment - punishment provisions attached to the commission of the various crimes. There has hardly ever been a careful survey and analysis of this aspect of the criminal law with a view to providing a sound, consistent body of sanctions. The present provisions represent intermittent responses to pressure on legislatures, reactions to public opinion which sometimes borders on hysteria, or, at best, intelligent guesswork. It is little wonder that, with such sanctions deeply embedded in the statute book, the actual sentencing of offenders shows indefensible variations and unfortunate effects not only on resentful convicted persons but also on the community which maintains expensive penocorrectional institutions and bears the brunt of their unregenerated output. Here, in sum, it is easy to see the evils of piece-meal legislation and to appreciate the value of logic because sustained efforts to organize the statutes practically compel inclusive analysis and synthesis in terms of similarities, differences, and inter-relationships (Hall, 1947, p. 52).

What should be done to an individual who commits an offense? When is the offender ready to be released into the "free world" and when has he paid his "debt" to society? These questions are directed to the very purpose and basic philosophy of corrections in our country today. Over 200 years ago Cesare Beccaria asked these same questions.

But what are to be the proper punishments for such crimes? Is the death penalty really useful and necessary for the security and good order of society? Are torture and torments just, and do they attain the end for which laws are instituted? What is the best way to prevent crimes? Are the same punishments equally effective for all time? What influence have they on customary behavior? (Beccaria, 1819, p.45).

The early concept of punishment was simply retribution based on the ancient Judaic doctrine of "an eye for an eye, and a tooth for a tooth." There did not exist a concept of corrections. Offenders were tortured by mutilations, stoned, branded, emasculated, castrated, and banished from their homes. In England capital punishment came to be inflicted for petty offenses including shoplifting (Barnes, 1930).

It was within this harsh climate of brutality and repression of the 18th and 19th centuries that a philosophical movement toward humanism developed. The offender was being thought of as an individual with a free will and the ability to reason. When an individual committed an offense, he was held solely responsible and accountable for his acts. The Classical School of Criminology which developed from the works of Cesare Beccaria stressed the concept of a certain amount of punishment to be prescribed for a certain crime (Radzinowicz, 1966). The object of punishment wrote Beccaria, ". . . is not to torment sensible

being, not to undo a crime already committed" (Beccaria, 1819, p. 47). Punishment is designed to ". . . prevent the criminal from doing further injury to society, and to prevent others from committing the like offense" (Beccaria, 1819, p. 47). The punishment should ". . . make the strongest and most lasting impressions on the mind of others, with the least torment to the body of the criminal" (Beccaria, 1819, p. 47).

During the late 19th and early 20th centuries, another approach to the offender developed which was to influence corrections to this day - that of rehabilitation. The theory of rehabilitation emphasized the individualization of the treatment of the offender within the correctional institution. The goal of corrections was to "treat" the offender rather than punish him.

There is no formula which can exact an equal amount of retribution from an offender for a crime of violence. There is, however, a certain amount of punishment involved in the treatment of an offender. The restriction of an offender's freedom, the loss of civil rights, and the relative isolation from society to a highly abnormal situation implies punishment regardless of its intent. The elements of retribution, deterrence, and rehabilitation are all contained within the philosophy of corrections in varying degrees. The degree to which one element should be emphasized over another is a matter of dispute among the legislators and private citizens.

In Texas every convicted offender who is incarcerated may be eligible for parole after receiving credit for serving one-third of his sentence or twenty years, whichever comes first.<sup>1</sup> Because of this an offender who receives a life sentence can conceivably be paroled in less than ten years.

Both the advanced eligibility for parole and reduced sentence result from the Texas "good time" statute.<sup>2</sup> The good time law allows an inmate to reduce the time he must serve to be eligible for parole and also allows him to reduce the number of years he must serve to discharge his maximum sentence. A convicted offender receiving a life sentence, or a sixty-year sentence, would be eligible for parole with credit for one-third of his sentence or twenty years served less good time reductions, as would a convicted offender sentenced to 100 or 1000 years in prison.

Good time allowance is a method by which an inmate may earn a reduction of his sentence by adhering to all the rules and regulations of the institution. The methods and procedures by which an inmate may gain reduction of his sentence for good behavior are directed by statute. Thus, good time allowances may be acquired only under the intent and language of the applicable statute.

The good time law, Article 6184z of the Revised Civil Statute of Texas, sets forth the regulations governing the allowances of good time for inmates in the Texas Department of

Corrections. A Class I inmate receives a total of twenty extra days time for each month served on his sentence providing he maintains an unblemished conduct and work record. All inmates received by the Department of Corrections are automatically placed in the Class I category. A Class II category inmate receives ten days extra time for each month served. The Class II category is for those inmates who have violated certain rules or regulations of the Department of Corrections. A Class III inmate receives no extra days credit for time served. This is referred to as serving "flat time" or "day for day." The Class III category is reserved for those inmates who have been found guilty of committing serious violations of the rules or regulations of the Department.

Under the same law which governs good time allowances, there is set forth another time-earning category for trusty status inmates. State approved trusty (SAT) inmates earn thirty extra days good time for every month served, or "two for one." There are four categories of state approved trusty. These are SAT I, SAT II, SAT III, and SAT IIIC (construction). SAT IIIC (construction) is that class of inmate who works construction. This classification is governed by the warden's recommendation and the Classification Committee. The only distinction between the SAT inmate categories is the amount of supervision required by inmates in the respective class and the privileges which are granted to the inmates. The SAT I inmate often works outside the confines of the institution with no immediate supervisor while the SAT II or the SAT III

inmate is more closely supervised by his custodial officer.

Because of the amount of good time allowances available to inmates and the relationship of good time allowances to parole eligibility, there has been severe criticism of the policy permitting reduction of sentence for good behavior in prison. One long-time Texas legislator has stated that, "The present law sends convicts of all types back to prey on an unsuspecting public that is being sacrificed for the sake of prison discipline and a smoothly operated correctional system" (Houston Chronicle, March 19, 1972). A parole authority from a state which does not have a good time statute has written that, "Good conduct time does not belong in a prison system if you have a parole system that is functioning properly. The only person who really benefits from good conduct time are the old recidivists who learn how to 'pull time'; and furthermore, good conduct is only one facet of the criteria used in determining that a person may adjust in the community, and by no means does good conduct in the institution follow each case into the community."<sup>3</sup>

George J. Beto, Ph. D., the former director of the Texas Department of Corrections, has defended the good time statute. "I don't believe the length of a man's sentence has any more to do with his rehabilitation than the color of his uniform . . . change in attitude is important. In some cases time does it. But time alone in most cases is a punishment device and is not related to rehabilitation" (Houston Chronicle, March 19, 1972). Dr. Beto states that the

controversy over the state's good time law is predicated on society's conflicting attitudes toward the offender. "What does the public really want its prisons to do - deal out revenge or seek rehabilitation? This prison system is geared to production and rehabilitation . . . . There is no way to get this job done in the relaxed security in which we operate without the good time law" (Houston Chronicle, March 19, 1972).

The policy of granting good time allowances is important to the inmate as well as the correctional administrator because of its effect on the release and discharge of the offender. There are four basic release procedures by which an inmate leaves a correctional institution: (1) parole, (2) pardon, (3) mandatory or conditional release, and (4) discharge. The policy of good time allowances affect release in three of these procedures: parole, conditional or mandatory release, and discharge (Manual of Correctional Standards, 1969). There is very little known, however, about the administration of good time allowances and its effect on release procedures. There has also been an increase of litigation involving the administration of good time and the disciplinary proceedings involving the forfeiture of good time allowances.<sup>4</sup>

The purpose of this study is to conduct a comprehensive investigation of good time policies and practices as they apply to adult correctional institutions throughout the nation. A comparison of the statutes and of the administrative procedures for granting good time allowances was conducted. The history of good time in corrections was surveyed and important court decisions which affect the administration and constitutionality

of good time allowances were studied.

A questionnaire (Appendix A) was developed in order to obtain information concerning the administration of good time policies in each state department of corrections. Federal Bureau of Prison policy statement on the administration of good time, various legal resources, and court decisions concerning good time were used as guidelines for developing the questionnaire. The questionnaire was sent to the directors of all state departments of corrections, the District of Columbia, and Guam.

A chart (Appendix B) indicating the amount of reductions and major functions of the good time statute for each state was prepared. The chart reflects the rate of good time allowances for each state and the effect which the allowances have on parole eligibility, mandatory or conditional release, and discharge. The chart also reflects statutory provisions for earning additional good time allowances and the limitations of eligibility for certain types of offenses or offenders.

The data collected from each state department of corrections provide a legal and administrative comparison of the state's good time laws and administrative procedures used for granting, forfeiting, and restoring good time allowances. The data were compiled and are summarized in Chapter II.

A second questionnaire (Appendix C) was also developed in order to obtain the attitudes of officials working in the criminal justice field in Texas concerning the use of good

time allowances in the Texas Department of Corrections. The questionnaire was sent to each of the district court judges, district attorneys, and sheriffs of the 100 largest counties in population in Texas (Appendix D). Some districts include two or more counties. The questionnaire was also sent to each field parole officer in Texas including the institutional parole officers at the Texas Department of Corrections. The district court judges, district attorneys, county sheriffs, and parole officers constituted Group I, which was labeled criminal justice officials.

The questionnaire was also sent to correctional officials and inmates at the Texas Department of Corrections. The warden, assistant warden, and two senior correctional officers at each of the fourteen units received questionnaires. The correctional administrators and officers comprised Group II which was labeled correctional officials. A stratified random sample of inmates was selected. Ten inmates in various good time earning classifications were selected from each unit and were sent questionnaires. This constituted Group III which was labeled inmates.

The data collected from the questionnaires sent to criminal justice officials, correctional officials, and inmates were analyzed. A comparison of the attitudes expressed by each of the three groups is summarized in Chapter II. Tables which represent a comparison of the attitudes of the three groups are also included in Chapter II.

Chapter III represents a legal discussion of the Due Process and Equal Protection rights of inmates concerning the granting, forfeiting, and restoring of good time allowances. A brief background of the legal rights of inmates concerning the granting of good time is presented. State and federal court decisions concerning the administrative procedures required for prison disciplinary hearings and the forfeiture of good time allowances are reviewed.

The summary and conclusions are contained in Chapter IV.

## CHAPTER II

### ADMINISTRATION OF GOOD TIME

#### Good Time in Texas

The importance of good time allowances for inmates in state correctional institutions is reflected by the number of inmates receiving good time allowances in Texas and other states. In Texas for the year of 1972, an average of 97 per cent of the inmates were earning good time allowances at any one time. Forty-six per cent were classified in SAT I, SAT II, SAT III, or SAT IIIC status earning sixty days credit for every thirty days served. An average of 0.2 per cent were in Class II status earning forty days for every thirty days served. And an average of only 2.4 per cent of the inmates served in a Class III status in which no good time allowances were earned.<sup>5</sup>

Of an average inmate population of 16,208 in 1972, there were approximately 1,300 disciplinary actions taken by the State Disciplinary Committee which resulted in the loss of good time or a reduction in classification which reduced the rate at which an inmate could earn good time allowances.<sup>6</sup> By maintaining a record of good conduct for a period of at least six months, an inmate may regain all lost good time allowances and be reclassified into a higher rate of good time earning status again.

### Good Time in the United States

In every state except California, Pennsylvania, Hawaii, and Utah, there exists a statute providing for good time allowances for adult offenders in state correctional facilities. The four states which do not have good time policies operate under variations of an indeterminate sentence.

### Responsibility

The authority for granting good time allowances is determined by the language and intent of the good time statute. The responsibility for granting good time, if not provided in the statute, generally rests with the director of corrections or the warden of the institution. This responsibility may be delegated to other individuals within the institution depending on the administrative policy which is used in the particular department of corrections. In most states the responsibility for granting good time is delegated to the institutional classification committee, the behavior review board, or the warden of the correctional institution. In New York, the Good Time Allowances Committee is responsible for granting good time. In Washington, the Board of Prison Terms and Paroles maintains authority and responsibility for granting good time allowances. In Wyoming, the Board of Parole has the authority and responsibility for granting good time allowances.

### Method of Good Time Allowances

The good time statute generally defines the amount and method in which allowances for good conduct will be credited to an inmate's sentence. There are four basic methods in which good time allowances are allotted. The most prevalent method is that of the "graduated" reduction in which an inmate receives increased allowances with each year served. The rates vary from state to state but usually range from three to five days a month for the first year served to ten to fifteen days a month for ten or more years served on a sentence. The "graduated" reduction method is used in twenty-two states.<sup>7</sup>

Another method used is the "flat" time reduction in which a certain amount of good time allowances is credited to an inmate's sentence depending on the length of the maximum sentence. The amount of reduction increases with an increase in the length of the maximum sentence. The reductions vary from one day a month on a one-year sentence to fifteen days a month for a ten-year or more sentence.<sup>8</sup> Eight states, the District of Columbia, and the Federal Bureau of Prisons use this form of reduction.<sup>9</sup>

Another method of granting good time allowance is the "fixed" reduction in which a certain amount of good time is granted to every inmate regardless of length of sentence or time served. Each inmate earns a fixed amount of good time per month while he is serving his sentence.

There are nine states which use this type of reduction.<sup>10</sup> In Washington, the amount of good time allowances credited to a sentence are fixed by the Board of Prison Terms and Paroles and may not exceed one-third of the sentence. In Missouri, the maximum sentence may be reduced by one-fourth if approved by the institutional discipline committee and the warden. Reductions in the other states which use this method range from five days per month in Vermont to twenty-five per month in Louisiana.

The "graded" or classification system is used in Texas, Arkansas, and Montana. Inmates placed in a certain grade or classification earn a prescribed amount of good time allowance which is set by statute. The reductions range from eight days a month for a Class III inmate to thirty days a month for a Class I inmate in Arkansas. An inmate in the Montana Department of Corrections earns good time allowances based on his work assignment.

The statutes of North Carolina and Wyoming provide for good time allowances but do not stipulate the amount to be credited. The responsibility and authority for the amount of reduction is left to the discretion of the Commissioner of Corrections in North Carolina and the Board of Parole in Wyoming.

#### Eligibility

The eligibility of an offender to earn good time allowances is determined by statutory provisions and the administrative policy of the particular department of

corrections. There are often restrictions placed on a certain type of offender, sentence, or condition under which the sentence is served which preclude the earning of good time allowances. Table 1 reflects the conditions of a sentence under which an offender is eligible to earn good time allowances. In eighteen states and the District of Columbia an offender may be eligible to earn good time allowances during pre-trial incarceration. In Oklahoma, only first offenders are eligible to receive good time credit for all their time in jail served prior to being incarcerated in the Department of Corrections. In fifteen states and the District of Columbia an offender may be eligible to gain good time allowances while waiting an appeal decision on his sentence. In twenty states and the District of Columbia an offender is eligible to earn good time allowances for pre-sentence and pre-incarceration time. Some departments of corrections allow an inmate to earn good time allowances while in jail on a bench warrant. In sixteen states inmates may earn good time allowances while in the hospital on a medical reprieve. In Indiana, New Jersey, New York, and West Virginia, inmates may earn good time allowances only during incarceration in the correctional institution.



TABLE 1  
Conditions of Sentence

I Pre-Trial Incarcer- ation	II Appeal	III Pre-Sentence Pre-Incarcer- ation	IV Bench Warrant	V Medical Reprieve	VI Insti- tution Only
Alas.	Alas.	Ala.	Alas.	Alas.	Ind.
Conn.	Conn.	Alas.	Conn.	Conn.	N. J.
D. C.	D. C.	D. C.	D. C.	Del.	N. Y.
Del.	Del.	Fla.	Del.	Ida.	W. Va.
Ga.	Ga.	Ga.	Ill.	Ill.	
Ill.	Ida.	Ill.	Tenn.	Ky.	
Iowa	Ill.	Iowa	Tex.	La.	
Mass.	Iowa	Kan.		Mass.	
Mich.	Nebr.	La.		N. H.	
Miss.	N. H.	Mass.		N. M.	
Mo.	N. C.	Mich.		N. C.	
Nebr.	Ohio	Mo.		Okla.	
N. H.	S. C.	Nev.		Ore.	
N. C.	Tenn.	N. H.		R. I.	
Okla.	Tex.	N. C.		Tenn.	
Ohio	Va.	Nebr.		Vt.	
S. C.		Ohio			
Tenn.		S. C.			
Va.		Tenn.			
		Va.			
		Wash.			

Table 1 - Continued

VII Parole	VIII Work Release or Work Furlough	IX Condi- tional Release	X County Jail or County Work House	XI County Reha- bilitation Center
Conn.	Ala.	Conn.	Alas.	Alas.
Ill.	Alas.	Ida.	Conn.	Conn.
Iowa	Ariz.	Ill.	D. C.	D. C.
Kan.	Ark.	Kan.	Fla.	Ill.
Me.	Colo.	Minn.	Ga.	Mich.
Mich.	Conn.	Nebr.	Ill.	S. C.
Minn.	D. C.	N. C.	Mass.	Tenn.
Nebr.	Del.	N. Dak.	Mich.	
Nev.	Fla.	Tenn.	Minn.	
N. H.	Ga.	Wyo.	Ohio	
N. M.	Ida.	Guam	R. I.	
N. Dak.	Ill.		S. C.	
S. Dak.	Iowa		Tenn.	
Wis.	Kan.		Va.	
Wyo.	Ky.			
	La.			
	Me.			
	Md.			
	Mass.			
	Mich.			

In fifteen states an offender may be eligible to earn good time allowances while on parole. In thirty-seven states, the District of Columbia, and Guam, inmates may earn good time while on work release or work furlough. In ten states and Guam inmates may earn good time while on conditional release. In some states an offender is eligible to earn good time while serving a sentence for a felony conviction in a county jail or work house. In six states and the District of Columbia an offender may be eligible to earn good time allowances while serving a sentence in the county rehabilitation center.

Table 2 reflects the type of offenders and sentences which preclude the earning of good time allowances. There are only seventeen states and Guam which allow all offenders to be eligible to earn good time allowances regardless of the sentence or offense committed. Those offenders receiving a life sentence in twenty-five states and the District of Columbia are not eligible to earn good time allowances. In Florida and Louisiana inmates with life sentences receive good time allowances; however, this has no immediate effect on the release date. This is due to the possibility that the life sentence may be commuted to a term of years which will make the offender eligible to receive credit for the good time allowances.

TABLE 2  
Type of Offender and Sentence  
Not Eligible for Good Time Allowances

I All Offenders	II Life	III Habitual Offenders	IV Murder 1st Degree	V Sex Offenders	VI Drug Offenders
Ariz.	Ala. Nebr.	Ind.	Ala.	Mass.	None
Ark.	Alas. N. M.	Ohio	Ind.	N. J.	
Conn.	Colo. N. Y.		Ohio	Colo.	
Del.	D. C. N. C.		D. C.	Wash.	
Fla.	Ga. N. Dak.		Mass.		
Ill.	Ida. Ohio		Mich.		
Kan.	Ind. Ore.		Wis.		
La.	Iowa R. I.				
Me.	Ky. S. C.				
Md.	Mass. S. Dak.				
Miss.	Mich. Va.				
Mont.	Minn. W. Va.				
Nev.	Mo. Wyo.				
N. H.					
Tenn.					
Tex.					
Vt.					
Guam					

In Idaho, offenders with a 120-day court jurisdiction case, if released within 120 days, are not eligible for good time. In Massachusetts and Virginia any inmate who is convicted of another felony offense while incarcerated is restricted from earning good time allowances thereafter. In Nebraska, inmates "not assigned" or idle are not eligible to earn good time allowances. In North Carolina, an offender convicted as a "committed youthful offender" or as a "public drunk" is not eligible to earn good time allowances.

In Oklahoma, an offender receiving a split sentence of ninety days or less for a felony conviction who serves part of the sentence in a correctional institution and the remainder on probation is not eligible to receive good time allowances. In South Carolina, offenders receiving an indeterminate sentence are not eligible to receive good time allowances.

#### Effect on Sentence

Good time allowances generally affect a sentence in two ways. Most statutes stipulate that the good time allowances are to be credited to the maximum sentence to advance conditional release or discharge. Some statutes also credit good time allowances to the minimum sentence or to a required portion of the maximum sentence to advance parole eligibility. Table 3 indicates the various effects that good time allowances have on a sentence in each state, the District of Columbia, Guam, and the federal correc-

tional system.

Good time allowances are credited toward the maximum sentence in thirty-two states to advance the discharge of sentence. In thirteen of the thirty-two states good time allowances affect only the discharge of sentence and not parole.<sup>11</sup>

In ten states, the District of Columbia, and the Federal Bureau of Prisons, good time allowances are credited to the maximum sentence to advance conditional release. In Alaska, Florida, New York, Wisconsin, the District of Columbia, and the Federal Bureau of Prisons, good time allowances affect only conditional release and not parole. In Georgia, good time allowances are credited to the minimum sentence only to advance conditional release. In North Carolina, good time allowances are credited toward the minimum sentence of an indeterminate sentence only for conditional release and to the maximum of a determinate sentence only for discharge.

Good time allowances are credited to the minimum sentence in twenty-one states to advance parole eligibility. In Ohio and Washington, good time is credited only to the minimum sentence to advance parole eligibility and does not affect discharge. In Indiana, good time is credited to the minimum for an indeterminate sentence and to the maximum of determinate sentences to advance discharge. In Arizona, good time allowances for first offenders only

TABLE 3

## Effect of Good Time on Sentence

I		II		III	
Credited to Maximum Sentence to Advance Discharge		Credited to Maximum Sentence to Advance Conditional Release		Credited to Minimum Sentence to Advance Parole Eligibility	
Ala.	Nev.	Alas.		Ariz.	Nebr.
Ark.	N. J.	Del.		Ark.	N. H.
Colo.	N. M.	D. C.		Colo.	Nev.
Conn.	N. C.	Fla.		Conn.	N. J.
Ida.	N. Dak.	Ill.		Ill.	N. Dak.
Ind.	Okla.	Kan.		Ind.	Ohio
Iowa	Ore.	Md.		Kan.	S. Dak.
Ky.	R. I.	Minn.		Me.	Tenn.
La.	S. C.	Nebr.		Md.	Vt.
Me.	S. Dak.	N. Y.		Mass.	Wash.
Mass.	Tenn.	Wis.		Mich.	
Mich.	Tex.	Federal			
Miss.	Vt.				
Mo.	Va.				
Mont.	W. Va.				
N. H.	Wyo.				

TABLE 3 - Continued

IV	V	VI
Credited to Maximum Sentence to Advance Parole Eligibility	Credited to Minimum Sentence to Advance Conditional Release	Credited to Life Sentence to Advance Parole Eligibility
Ariz.	Ga.	Ark.
Ark.	N. D.	Conn.
Del.		Del.
Ida.		Me.
Ill.		Md.
Minn.		Mont.
Mont.		N. H.
N. J.		N. J.
S. Dak.		Tenn.
Tex.		Tex.
Wyo.		Wash.
Guam		Wis.

are credited to the minimum sentence to advance parole eligibility. Good time allowances may be credited to the minimum sentence of second offenders to advance parole eligibility if approved by the Board of Pardons and Paroles. In Massachusetts, only extra good time allowances are credited to the minimum sentence to advance parole eligibility.

In twelve states good time allowances are credited to the maximum sentence to advance parole eligibility. Good time allowances are credited to the maximum sentence of all offenders in Guam to advance parole eligibility and do not affect discharge. In South Dakota, good time allowances are credited to the minimum of an indeterminate sentence and maximum of a determinate sentence to advance parole eligibility.

In eleven states offenders serving a life sentence may advance parole eligibility with credit for good time allowances.

#### Computation of Good Time Allowances

Good time allowances are computed in various methods depending on the interpretation of the statute or administrative policy. Often the statute stipulates that good time allowances will be credited to a sentence by the month as it is earned. Thirty-seven states,<sup>12</sup> the District of Columbia, and the Federal Bureau of Prisons indicated that an offender is credited with a certain amount of good time allowance on his sentence when he is received into the correctional institution and a tentative date is set for

parole eligibility, conditional release, or discharge of the sentence. The tentative date is subject to change depending on the reclassification of the inmate or the forfeiture or denial of good time allowances. Seven states<sup>13</sup> and Guam indicated that good time allowances are credited to the sentence by the month as they are earned. Virginia indicated that an inmate's record is reviewed every six months to determine eligibility for good time allowances.

In Indiana, good time allowances are credited toward the minimum of an indeterminate sentence by the month as they are earned to advance parole eligibility. On a determinate sentence, they are credited to the maximum sentence of the offender when he is received into the institution to determine a tentative discharge date.

#### Additional Good Time Reductions

Most departments of corrections<sup>14</sup> grant additional good time allowances for meritorious conduct, extra work, or special services performed by the inmate. Inmates in a trusty status also earn additional good time allowances. Additional good time allowances are credited to the inmate's sentence as they are earned. In Florida, extra good time is credited at the time the Classification Committee reviews an inmate's reclassification and progress report or at a scheduled review date. Good time allowances of a lump sum amount are credited at any time by the Director. In South Carolina, meritorious good time allowances of thirty days are credited to the sentence every six months as earned with a maximum of sixty days earned in one year. There

are only eight states<sup>15</sup> and Guam which do not grant some form of additional good time allowances.

In twelve states<sup>16</sup> and the District of Columbia, inmates donating a pint of blood may receive good time allowances. The amount of reductions vary from ten days to sixty days per year depending on the number of donations an inmate may make a year.

#### Good Time Allowances on Multiple Sentences

For purposes of computing good time allowances on multiple sentences running concurrently, all the states, the District of Columbia, and Guam deduct the good time allowances as if they were on one sentence. On multiple sentences running consecutively, good time allowances are computed separately on each sentence in twelve states.<sup>17</sup> In Kansas, inmates serving consecutive sentences are eligible for parole after serving the minimum of their last sentence and the maximum of all prior sentences, less good time and incentive credits earned and retained on each of these sentences.

In twenty-three states,<sup>18</sup> the District of Columbia, and Guam, multiple sentences running consecutively are added together to form one continuous sentence with a maximum term. Good time allowances are then deducted from the aggregate of the multiple sentences in accordance with the laws of the state.

On multiple sentences in Ohio, the minimum and the maximum of each sentence are added together to form one continuous sentence. In South Carolina, multiple sentences running consecutively are added together to form one continuous sentence with a maximum release date and a release date less good time allowances.

A subsequent conviction and sentence for a felony while serving an original sentence acts as a separate sentence for purposes of computing good time deductions in fifteen states.<sup>19</sup> In Massachusetts, a subsequent conviction and sentence for a felony while serving an original sentence acts as a separate sentence for purposes of computing good time if the offender is sent to another institution. In New Mexico, the court stipulates whether or not a separate conviction will act as a separate sentence to be served consecutively. In Wisconsin, a subsequent conviction and sentence for a felony while serving the original sentence acts as a separate sentence only if the new sentence would affect the mandatory release and discharge date.

#### Good Time Credits in Resentencing

The question of whether a prisoner who has had his sentence vacated and has been resentenced after he has served a portion of the sentence originally imposed is entitled to credit for good conduct for the time served under the original sentence has been discussed in the courts. Some courts maintain that credit for good conduct does not accrue until it has been completely earned.

However, in the recent case of North Carolina v. Pearce, the Supreme Court stated that:

We hold that the constitutional guarantee against multiple punishment for the same offense absolutely requires that punishment already exacted must be fully "credited" in imposing sentence upon a new conviction for the same offense. If, upon a new trial, the defendant is acquitted, there is no way the years he spent in prison can be returned to him. But if he is reconvicted, those years can and must be returned -- by subtracting them from whatever new sentence is imposed.<sup>20</sup>

Such credit includes the time credited during service of the first sentence for good conduct and all additional good time allowances.

Nineteen states<sup>21</sup> and the District of Columbia indicated that they do not give credit for good time earned during the original sentence on the new sentence. Nebraska and Oregon indicated that they will give credit on a new sentence for good time only by court order. All other correctional systems surveyed indicated that they credited all good time allowances earned on the original sentence toward the new sentence received for the same offense.

#### Good Time on Life Sentence

In states which have a death penalty statute and which do not allow good time allowances on a life sentence, an offender may become eligible for good time allowances only if his sentence is commuted to a term of years. When a sentence of death is commuted to life, the date upon which good time allowances begin to accrue is dependent on the language and intent of the

statute or the commutation. Good time allowances are usually applicable on commuted sentences the same as if the new sentence were the one originally imposed, unless the order of commutation indicates that the new term is to be served without deductions for good conduct. Whether the allowance will be credited from the beginning of the original sentence or from the date of commutation depends on the language of the statute or the conditions of the commutation.

There are twenty-five states<sup>22</sup> and the District of Columbia which do not allow good time allowances on a life sentence. Of the nine states<sup>23</sup> which have a good time law and which do not have a statute providing for the death penalty, only Maine allows for good time allowances on a life sentence. In a recent Supreme Court decision, the death penalty as it is enforced at the present time has been ruled unconstitutional. Those offenders with death sentences will have their sentences commuted to life or to a term of years.

In six states<sup>24</sup> and Guam, in which offenders serving a life sentence are eligible to receive good time allowances, good time may begin to accrue from the effective date of the commutation when a death sentence is commuted to a sentence of life. In Connecticut, Delaware, Kansas, Nevada, and Oklahoma (first offenders only), if a death sentence is commuted to life, an offender may be eligible to earn

good time allowances from the date of his original sentence including jail time. In New Hampshire, Maryland, and Vermont, if a death sentence is commuted to life, an offender is eligible for good time allowances from the date of his incarceration into the department of corrections. In Arizona, good time begins to accrue from the date of assignment to a position of "trust and confidence." In Illinois, good time would begin to accrue from the date of arrest and custody in jail awaiting trial.

If a death or life sentence is commuted to a term of years the date upon which an offender would be eligible to earn good time allowances would be from the effective date of the commutation in ten states<sup>25</sup> and Guam. In seven states<sup>26</sup> and the District of Columbia the date upon which good time would begin to accrue depends on the specific conditions of the commutation. In twenty-four states<sup>27</sup> good time allowances on a commuted sentence begin from the date of arrest to the date of first incarceration depending on the language of the particular statute.

There is no commutation of a life sentence in Alabama or South Carolina. An offender may receive a commutation from a death sentence to life. In Louisiana, when a death sentence is commuted to a term of years, good time takes effect at the date of commutation. When a life sentence is commuted to a term of years, good time takes effect at the date of the original sentence. In Arizona, when a

death or life sentence is commuted to a term of years, good time takes effect at the original date of assignment to a position of "trust and confidence."

#### Forfeiture and Denial of Good Time

Every state which has a good time statute also provides for the forfeiture or denial of good time allowances for any major violation of the institutional rules and regulations such as escape or commission of a felony. An accumulation of minor violations may also result in the forfeiture or denial of good time allowances. The forfeiture or denial of good time allowances is generally an administrative procedure which is not necessarily governed by statutory provisions. The statutes and administrative practices differ from state to state.

The forfeiture is the taking from an inmate all or part of his good time allowances that he has earned up to the time of the violation. The denial of good time is the withholding of good time allowances or eliminating the possibility of an inmate earning good time by his being placed in a non-earning classification. The good time statutes in most states allow for the forfeiture of good time allowances but do not stipulate the amount which may be forfeited. There are a few states,<sup>28</sup> however, in which good time statutes do indicate the amount of good time to be forfeited for misconduct.



The federal procedures and regulations concerning the forfeiture of good time allowances are set forth in great detail. The Federal Bureau of Prisons has stated formally that the forfeiture, withholding, and restoration of good time shall be accomplished in accordance with the existing policy statements.<sup>29</sup> Good time allowances may be withheld by the Institutional Adjustment Committee when an inmate has violated or failed to comply with institutional rules or regulations. A recommendation for withholding is submitted to the director of the correctional institution. The amount of good time withheld is limited to the good time credited for the month during which the violation occurred. Offenses which are more serious in nature and require a forfeiture of good time are handled by the Good Time Forfeiture Committee using the required forfeiture proceedings.

When an inmate is accused of a violation serious enough to warrant consideration of forfeiture of good time, the Committee conducts a good time forfeiture hearing. The chairman makes arrangements for conducting a hearing and for making a report of the hearing. A record of the hearing is kept which summarizes all the evidence presented during the hearing. The inmate is allowed to be present at the hearing, is informed of his rights, and is presented with the details of the charges placed against him. He is also

informed of the rules and procedures which the Committee will follow. If the inmate is not mentally competent, good time allowances are not forfeited. If the inmate admits committing the violation, he is permitted to make a statement in his behalf explaining his conduct. He is also allowed to have a staff member speak in his behalf if he so desires.

If the inmate denies committing the violation, he may have a staff member represent him at the hearing. If the inmate wants a staff representative, the chairman will arrange for this person to represent the inmate at the hearing. Rules of evidence and of trial procedure do not apply to the hearing. The chairman presents any evidence to support the misconduct. Additional evidence or investigations can be made or additional witnesses and statements from unavailable witnesses can be presented at the hearing. All evidence heard or seen by the committee is made known to the inmate and his representative. In the case of possible danger to another inmate witness, the evidence is presented by the committee with an explanation for the absence of the witness.

The inmate or his representative is permitted to make a statement after the initial evidence is presented. The inmate can request witnesses in his behalf or written statements from unavailable witnesses. The inmate or his

representative may then make a final statement. The committee then makes its determination and submits a written report to the Chief Executive Officer. The reports contain all the evidence presented at the hearing and the committee's recommendations. A minority report may be submitted by any member of the committee. The recommendation of the committee includes any explanation for its decision.

The Chief Executive Officer reviews the report and either approves or rejects the recommendations of the committee. A copy of the decision is placed in the inmate's file and the inmate is given a written report of the hearing and the final decision of the Chief Executive Officer.

The inmate may appeal the decision to the Office of General Counsel and Review through the Prisoner's Mail Box. He may also confer with the staff members who represented him at the hearing if he so desires.

The procedures used by the Federal Bureau of Prisons for the forfeiture or denial of good time allowances are used in whole or in part by many of the state departments of corrections. The responsibility for the forfeiture or denial of good time is often designated by administrative policy rather than statute. The statute may designate the director of corrections, commissioner, or warden of the institution as the authority but the immediate responsibility rests with other personnel within the institution. The immediate responsibility may be that

of an institutional discipline committee which consists of a board of three to five employees within the institution.

In Idaho, the immediate responsibility for forfeiture of good time rests with the Adjustment Committee. In Illinois, it is referred to as the Merit Staff, in Louisiana the Good Time Board, and in New York the Good Time Allowances Committee. Recommendations for disciplinary action are sent from the discipline committee to the warden for his approval. The warden will then send the recommendation to the director of corrections for final approval. In Arizona, Nevada, and Washington, the Board of Pardons and Paroles has the final authority for forfeiting good time allowances.

Table 4 indicates the responses given by every department of corrections surveyed concerning the administrative procedures used in forfeiting good time allowances.

In most states, the accused inmate is given written notice of the charges brought against him. In Connecticut and Minnesota the inmate is given verbal notice at the hearing. In Alabama, the inmate is given a minimum of twenty-four hours to prepare a defense after the charges have been submitted and prior to the meeting of the discipline committee. An inmate in the Missouri Department of Corrections is not given a written notice but signs a

TABLE 4

Required Procedures for Forfeiture  
of Good Time Allowances

I		II			III		
Written Notice of Charges Given to Inmate		Hearing by Disci- pline Committee			Inmate Present at Hearing		
Ala.	Miss.	Ala.	Me.	Ohio	Ala.	Ky.	N. C.
Alas.	Mo.	Alas.	Md.	Okla.	Alas.	Me.	N. Dak.
Ariz.	Nebr.	Ariz.	Mass.	Ore.	Ariz.	Md.	Ohio
Ark.	Nev.	Ark.	Mich.	R. I.	Ark.	Mass.	Okla.
Colo.	N. J.	Colo.	Minn.	S. C.	Colo.	Mich.	Ore.
Conn.	N. M.	Conn.	Miss.	S. Dak.	Conn.	Minn.	R. I.
Del.	N. Y.	D. C.	Mo.	Tenn.	D. C.	Miss.	S. C.
Fla.	N. C.	Del.	Nebr.	Tex.	Del.	Mo.	Tenn.
Ga.	N. Dak.	Fla.	Nev.	Vt.	Fla.	Nebr.	Tex.
Ida.	Ohio	Ga.	N. H.	Va.	Ga.	Nev.	Vt.
Ill.	R. I.	Ida.	N. J.	Wash.	Ida.	N. H.	Va.
Ind.	S. C.	Ill.	N. M.	W. Va.	Ill.	N. J.	Wash.
Iowa	Tenn.	Ind.	N. Y.	Wis.	Ind.	N. M.	W. Va.
Kan.	Vt.	Iowa	N. C.	Wyo.	Iowa	N. Y.	Wis.
Me.	Va.	Kan.	N. Dak.	Guam	Kan.		
Md.	Wash.	Ky.					
Mass.	Wis.						
Mich.	Guam						
Minn.							

TABLE 4 - Continued

IV Inmate Repre- sentative or Counsel Sub- stitute		V Formal Legal Counsel	VI Witnesses for Inmate	
Ala.	Mich.	D. C.	Ala.	Nebr.
Alas.	Miss.	Ida.	Alas.	Nev.
Colo.	Mo.	Kan.	Ark.	N. J.
Conn.	Nebr.	Nebr.	Del.	N. M.
D. C.	N. J.	N. M.	Ga.	N. Y.
Del.	N. M.	Va.	Ida.	N. C.
Ga.	N. Y.		Ill.	Ohio
Ida.	N. C.		Ind.	Ore.
Ind.	N. Dak.		Iowa	R. I.
Iowa	Ore.		Kan.	Tenn.
Kan.	R. I.		Ky.	Vt.
Ky.	S. C.		Me.	Va.
Me.	Tenn.		Md.	Wash.
Md.	Vt.		Mass.	W. Va.
Mass.	Va.		Miss.	

TABLE 4 - Continued

VII Written Notice of Decision Given to Inmate		VIII Appeal to Correctional Authority		IX Appeal to Courts
Ala.	Mont.	Ala.	Nebr.	Ala.
Alas.	Nebr.	Alas.	Nev.	Alas.
Ariz.	Nev.	Ark.	N. J.	Ark.
Ark.	N. J.	Colo.	N. M.	Colo.
Colo.	N. M.	Del.	N. Y.	Fla.
Conn.	N. Y.	Fla.	N. C.	Ida.
Del.	N. C.	Ga.	N. Dak.	Ill.
Fla.	N. Dak.	Ida.	Ohio	Iowa
Ga.	Ohio	Ill.	Okla.	Kan.
Ida.	Ore.	Ind.	Ore.	La.
Ill.	R. I.	Iowa	R. I.	Md.
Ind.	S. C.	Kan.	S. C.	Mass.
Iowa	S. Dak.	La.	Tenn.	Nev.
Kan.	Tenn.	Me.	Tex.	N. J.
Md.	Tex.	Md.	Vt.	Ore.
Mass.	Vt.	Mass.	Va.	S. C.
Mich.	Va.	Mich.	Wash.	Tenn.
Minn.	Wash.	Miss.	W. Va.	Tex.
Miss.	Wis.	Mo.	Wis.	Va.
Mo.	Wyo.			Wash.
				Wis.

copy of the charges and the decisions of the committee to indicate that he is aware of the proceeding against him.

In thirty-four states, the District of Columbia, and Guam, a committee formed by various members of the institution hears the charges against the accused inmate. In Nevada, a hearing is held by the Parole Board. Only two states, Louisiana and Montana, indicate that there is no hearing held concerning the forfeiture of good time. In Montana, a request is submitted by the institution to the Department of Institutions for forfeiture. When the Department of Institutions forfeits an inmate's good time, the inmate is notified.

In almost every department of corrections that holds a hearing, the accused inmate is permitted to be present if he desires. The inmate is not present at the discipline committee hearing in South Dakota, Wyoming, or Guam.

Most of the states which hold a discipline hearing also allow an inmate representative or informal type of advisor to assist the inmate at the hearing. Inmates in the South Carolina Department of Corrections are assisted in preparing their cases by inmate representatives. Administrative policy states that:

If you so request, you will be provided with someone to assist you in preparing your case to present to the Adjustment Committee. At the Central Correctional Institution, Manning Correctional Institution, and Harbison Correctional Institution for Women, person(s) will be employed in this capacity. At the outlying institutions, members of the staff (excluding correctional officers) will be

available to provide assistance for you. A list of staff members who are available to represent you will be available to you. If you do not wish to be represented by the next person on the list of employees, you may reject this person and select the next person on the list. However, you will not be permitted to randomly select anyone on the list you want to represent you. The persons who will assist you will be fact finders, in that their responsibility will be to interview you, your witnesses, and other persons involved in the particular incident so that the representative may attempt to determine exactly how the incident occurred; he will be expected to present his findings to the Adjustment Committee as he determined from his investigation.<sup>30</sup>

In only five states and the District of Columbia is an inmate permitted to have formal legal counsel represent him at the hearing.

In twenty-nine states the inmate may call witnesses to the hearing to make statements in his behalf. In Illinois, the inmate may call only correctional officers as witnesses. In Oregon, the accused inmate may submit questions to the witnesses at the discipline hearing.

In forty states the accused inmate is given a written notice of the findings and decision to forfeit his good time allowances. The inmate may appeal the decision to a higher authority in most states. In Maryland, the inmate may appeal to the Inmate Grievance Committee. In Washington, the Discipline Committee will recommend a hearing by the Parole Board. In Ohio, the warden or superintendent will send a letter to the adult parole authority and the Parole Board will continue the eligibility for good time allowances. In Arizona, the Board of Pardons and Paroles

exercises the ultimate authority. Only twenty-one states indicated that the inmate may appeal the decision to the courts for formal legal relief.

#### Restoration of Good Time

In almost every state, good time allowances which have been forfeited may be restored. This is accomplished by authority of the statute or administrative policy. The authority for restoring lost good time is generally the same which authorized the forfeiture. Iowa, Louisiana, and Montana do not authorize restoration of forfeited good time.

The immediate responsibility for restoring forfeited good time allowances in Nebraska and North Dakota is the Institutional Discipline Committee which sends its recommendation to the warden for approval. The Institutional Classification Committee is responsible for sending its recommendation for restoration of good time to the warden in Kansas, Kentucky, New Mexico, Oklahoma, and Tennessee. In twenty states<sup>31</sup> the warden of the institution is immediately responsible for restoring good time. In ten states,<sup>32</sup> the District of Columbia, and Guam, the Director of Corrections is immediately responsible for restoring good time allowances. In a few states the responsibility rests with the board of pardons and paroles. This occurs in Arizona, Nevada, Washington, and Wyoming. In North Carolina, the warden of the correctional institution is authorized to restore up to thirty days of lost good time. Anything over thirty days must be restored by the Director of the

Department of Corrections with the recommendation of the institutional superintendent or warden. In Illinois, a Merit Staff recommends restoration of good time to the warden and director for approval. In Maryland, the warden restores up to five days and the commissioner the remaining good time. In New Jersey, the prison board of trustees restores lost good time allowances. In New York, the Good Time Allowance Committee restores lost good time.

In sixteen states<sup>33</sup> and Guam an inmate may have his good time restored, at the discretion of the authority for restoring good time allowances, by maintaining a record of good conduct and work for a definite period of time. In Texas, this period is usually six months. Good time allowances forfeited in twenty-one states<sup>34</sup> and the District of Columbia can be restored at the discretion of the proper authority with no definite period of time specified.

#### Good Time Forfeiture for Parole Violation

In most states,<sup>35</sup> the District of Columbia, and Guam, a parole violator is eligible to earn good time on the remainder of his sentence. In a few states,<sup>36</sup> however, he may not regain the forfeited good time once he has been placed back in custody. In Massachusetts, good time is withheld for the first six months. Parole violators are not eligible to earn good time on the remainder of their sentence in Indiana, New Jersey, and Oregon. In sixteen states<sup>37</sup> an offender on parole who violates the conditions

of his parole may have his good time allowances which were earned while incarcerated or during parole forfeited. In Florida, Illinois, Kansas, and Tennessee, an offender may have his good time forfeited by violating the terms of his conditional release. In Wisconsin, an offender will have only the good time which was earned while on parole forfeited for violating the terms of his mandatory release. In Florida and Tennessee an offender who violates the conditions of his pardon will have all his good time allowances forfeited. A parole violator does not forfeit his earned good time in Kentucky and Minnesota.

#### The Value of Good Time

The questionnaire (Appendix A) which was sent to each state department of corrections included questions concerning the effectiveness and practicality of using good time allowances as a tool for motivation and control within the institution. Forty-three states, the District of Columbia, and Guam indicated that the policy of good time allowances aid in maintaining control of the inmates within the institution. Six states,<sup>38</sup> three of which do not have good time, expressed the opinion that the policy of good time does not aid in maintaining control within the institution. Thirty-three states indicated that good time allowances motivate inmates to take part in institutional programs. Sixteen states<sup>39</sup> and the District of Columbia indicated that good time allowances did not motivate inmates to take part in institutional programs. Sixteen

states<sup>40</sup> and the District of Columbia indicated that the purposes served by the use of good time allowances could be better accomplished by the use of an indeterminate sentence without good time allowances provided for good behavior. The remaining states preferred to use good time allowances.

#### Texas

A questionnaire (Appendix C) designed to obtain opinions concerning the use of good time allowances in the Texas Department of Corrections was sent to officials and administrators working in the criminal justice system in Texas. The questionnaire was sent to district court judges, county sheriffs, district attorneys, and parole officers in Texas. Of the 360 criminal justice officials who received the questionnaire, 58 per cent responded. The questionnaire was also sent to the wardens, assistant wardens, and senior correctional officers of all the units of the Texas Department of Corrections. Of the fifty-six correctional officials who received the questionnaire, 89 per cent responded. A sample of ten inmates in each of the fourteen units of the Texas Department of Corrections was sent a questionnaire. The sample consisted of inmates in various good time earning classifications. The sample also included inmates in Class III status in which no good time allowances are earned. Of the 140 inmates who received the questionnaire, 87 per cent responded.

The questionnaires returned by the criminal justice officials, the correctional officials, and the inmates were compared. An attempt was made to distinguish the differences, if any, in attitudes of the three groups toward the use of good time allowances. The policy of good time allowances has a great influence on the system of correctional administration and criminal justice in the State of Texas. The criminal justice officials influence the legislation which governs the use of good time allowances. The correctional administrators have the task of implementing the good time policy and the inmates are directly affected by its use.

The questionnaire contained ten questions concerning the good time statute, the eligibility, the effectiveness, and the administrative procedures used for the forfeiture of good time allowances. The responses of each of the three groups are represented in percentage form for each question.

Table 5 reflects the attitudes of the criminal justice officials, correctional officials, and inmates toward the Texas good time statute. Thirty per cent of the criminal justice officials indicated that the statute should be changed to reduce the amount of good time allowances an inmate may earn while incarcerated. Four per cent of the correctional officials indicated that good time should be reduced. One per cent of the inmates indicated that the good time allowances should be reduced.



TABLE 5  
Attitudes Toward Texas' Good Time Statute

Attitudes	Criminal Justice Officials	Correctional Officials	Inmates
For reduction in good time	30%	4%	1%
For no change in statute	23%	82%	12%
For increase in good time	6%	2%	73%
For restriction of eligibility	67%	16%	30%
For crediting of good time to maximum sentence only	40%	9%	19%
For elimination in favor of parole	3%	0%	55%
For repeal of good time statute	5%	2%	25%

Note: Per cent figures do not total 100 per cent because respondents may indicate more than one response.

Twenty-three per cent of the criminal justice officials indicated that the law is adequate and does not need to be changed. Eighty-two per cent of the correctional officials and 12 per cent of the inmates indicated that the statute is adequate and does not need to be changed.

Six per cent of the criminal justice officials and 2 per cent of the correctional officials indicated that the law should be changed to increase the amount of good time allowances an inmate may earn. Seventy-three per cent of the inmates indicated that the law should be changed to allow for more good time.

Forty per cent of the criminal justice officials indicated that the good time statute should be changed so that good time allowances are credited toward the maximum sentence for discharge only and not to advance parole eligibility. Eight per cent of the correctional officials reported that good time allowances should not be credited to the sentence to advance parole eligibility. Nineteen per cent of the inmates indicated that good time allowances should not be credited toward a sentence to advance parole eligibility.

Only 3 per cent of the criminal justice officials indicated that the good time allowances should be eliminated in favor of a more liberal parole policy. None of the correctional officials indicated that this should be done. Fifty-five per cent of the inmates indicated that good time



allowances should be eliminated in favor of a more liberal parole policy.

Five per cent of the criminal justice officials indicated that the good time statute should be repealed completely. Only 2 per cent of the correctional officials indicated that the good time statute should be repealed. Twenty-five per cent of the inmates indicated that the good time statute should be repealed.

Other recommendations made were to include a conditional release procedure whereby all released offenders would serve the remainder of their actual adjudicated sentence under supervision of the Parole Board. Others replied that once good time allowances have been forfeited for misconduct, they should not be restored for future good behavior.

Table 6 indicates responses to the question of what types of offenders which should not be eligible to earn good time allowances. Thirty-three per cent of the criminal justice officials indicated that all types of offenders should be eligible to earn good time allowances. Eighty-four per cent of the correctional officials indicated that all types of offenders should be eligible to earn good time allowances. Seventy per cent of the inmates reported that all types of offenders should be eligible to earn good time allowances.

TABLE 6

Attitudes Toward Eligibility of Certain Types of Offenders to Earn Good Time

Type of Offender Which Should Not Be Eligible for Good Time	Criminal Justice Officials	Correctional Officials	Inmates
All eligible	33%	84%	70%
Habitual offender	52%	4%	8%
Recidivist	27%	0%	5%
Sex offender	24%	8%	23%
Drug offender	14%	4%	9%
Murder offender	29%	10%	14%
Offender with life sentence	37%	4%	2%
Offender convicted of a violent crime	21%	6%	8%

Note: Per cent figures do not total 100 per cent because respondents may indicate more than one response.

Fifty-two per cent of the criminal justice officials indicated that offenders sentenced as habitual offenders, which is an automatic life sentence in Texas, should not be eligible to earn good time allowances. Four per cent of the correctional officials reported that habitual offenders should not be eligible to earn good time allowances. Eight per cent of the inmates indicated that habitual offenders should not be eligible to earn good time allowances.

Twenty-seven per cent of the criminal justice officials, no correctional officials, and 5 per cent of the inmates indicated that all recidivists should not be eligible to earn good time allowances.

Twenty-four per cent of the criminal justice officials, 8 per cent of the correctional officials, and 23 per cent of the inmates indicated that sex offenders should not be eligible to earn good time allowances.

Fourteen per cent of the criminal justice officials indicated that convicted drug offenders should not be eligible to earn good time allowances. Four per cent of the correctional officials and 9 per cent of the inmates indicated that convicted drug offenders should not be eligible to earn good time allowances. It was recommended by some that only offenders convicted of the sale of narcotics and dangerous drugs should not be eligible to earn good time allowances.

Twenty-nine per cent of the criminal justice officials, 10 per cent of the correctional officials, and 14 per cent of the inmates reported that an offender convicted of murder in the first degree, or murder with malice should not be eligible to earn good time allowances. Thirty-seven per cent of the criminal justice officials, 4 per cent of the correctional officials, and 2 per cent of the inmates indicated that all offenders receiving a life sentence should not be eligible to earn good time allowances. Twenty-one per cent of the criminal justice officials, 6 per cent of the correctional officials, 8 per cent of the inmates indicated that all offenders convicted of crimes of violence should not be eligible to receive good time allowances. It was also suggested that when an offender's death sentence is commuted to a life sentence that he not be eligible to gain good time allowances or parole eligibility.

When asked if the use of good time allowances aided in maintaining control of the inmates within the institution, 93 per cent of the criminal justice officials, 98 per cent of the correctional officials, and 90 per cent of the inmates indicated that the policy of using good time allowances did aid in maintaining control within the institution. Three per cent of the criminal justice officials, 2 per cent of the correctional officials, and 10 per cent of the inmates indicated that the use of good time did not

aid in maintaining discipline and control within the institution.

When asked whether the policy of good time allowances motivates the inmates to seek out and take part in institutional programs, 85 per cent of the criminal justice officials, 88 per cent of the correctional officials, and 84 per cent of the inmates indicated that the policy of good time allowances motivated the inmates to seek out and participate in institutional rehabilitative programs. Seven per cent of the criminal justice officials, 12 per cent of the correctional officials, and 16 per cent of the inmates indicated that the policy of good time allowances did not motivate the inmates to participate in rehabilitative programs.

Table 7 indicates responses given concerning proceedings involved in forfeiting an inmate's good time allowances for misconduct. Fifty-five per cent of the criminal justice officials, 32 per cent of the correctional officials, and 74 per cent of the inmates indicated that the inmate accused of a violation should be given a written notice of the charges. Seventy-five per cent of the criminal justice officials, 98 per cent of the correctional officials, and 100 per cent of the inmates indicated that before an inmate loses his good time a discipline committee should hold a hearing concerning the charges of misconduct brought against the inmate. Sixty-two per cent of the criminal justice officials, 80 per cent of the correctional

TABLE 7

Attitudes Toward Good Time Forfeiture Procedures

Forfeiture Procedures	Criminal Justice Officials	Correctional Officials	Inmates
Inmate given written notice of charges	55%	32%	74%
Hearing held	75%	98%	100%
Inmate at hearing	62%	80%	93%
Witnesses for inmate at hearing	43%	2%	87%
Inmate may cross examine witnesses at hearing	39%	0%	78%
Inmate representative available at hearing	18%	0%	80%
Legal counsel available at hearing	29%	14%	66%
Written notice of forfeiture decision	63%	56%	87%
Inmate permitted to appeal decision to higher correctional authority	25%	64%	85%
Inmate permitted to appeal decision to the courts	6%	8%	68%

Note: Per cent figures do not total 100 per cent because respondents may indicate more than one response.

officials, and 93 per cent of the inmates indicated that the inmate should be permitted to be present at the hearing if he requests to attend. Forty-three per cent of the criminal justice officials, 2 per cent of the correctional officials, and 86 per cent of the inmates indicated that the inmate should be permitted to call witnesses in his own behalf at the hearing if requested. Thirty-nine per cent of the criminal justice officials, none of the correctional officials, and 78 per cent of the inmates felt that an inmate should be allowed to question the witnesses if requested. Twenty-nine per cent of the criminal justice officials, 14 per cent of the correctional officials, and 66 per cent of the inmates indicated that the inmate should be permitted to have a representative or nonlegal advisor present at the hearing to represent the inmate if requested. Eighteen per cent of the criminal justice officials, 9 per cent of the correctional officials, and 80 per cent of the inmates indicated that the inmate should be permitted to have formal legal counsel present at the hearing to represent him if he so desires. Sixty-three per cent of the criminal justice officials, 56 per cent of the correctional officials, and 87 per cent of the inmates indicated that a written notice of the hearing and the committee's recommendations should be given to the inmate after the committee makes its decision. Twenty-five per cent of the criminal justice officials, 64 per cent of the correctional officials, and 85 per cent of the inmates indicated that the inmate should be permitted to appeal the committee's decision to the

warden or director of corrections. Six per cent of the criminal justice officials, 8 per cent of the correctional officials, and 68 per cent of the inmates responded that the inmate should be permitted to file a motion for appeal of the decision to the courts.

When asked about the use of the indeterminate sentence, 43 per cent of the criminal justice officials, 20 per cent of the correctional officials, and 55 per cent of the inmates indicated that the purposes served by the use of the good time allowances policy could be better accomplished by the use of an indeterminate sentence. Fifty per cent of the criminal justice officials, 80 per cent of the correctional officials, and 45 per cent of the inmates preferred the use of good time allowances rather than the use of an indeterminate sentence policy.

When asked about the sentencing authority, the judge, when he passes sentence, 5 per cent of the criminal justice officials, 50 per cent of the correctional officials, and 56 per cent of the inmates indicated that the sentencing judge, when passing sentence, did consider the good time allowances available to the offender. Forty-three per cent of the criminal justice officials, 50 per cent of the correctional officials, and 4 per cent of the inmates reported that the judge did not take into consideration the good time allowances an offender may earn when passing sentence.

When asked whether an inmate's sentence is greater or less due to the judge considering the good time allowances available to an offender in prison when passing sentence, 56 per cent of the criminal justice officials who responded to the question indicated that the sentence was increased. Thirty-eight per cent of the correctional officials and 57 per cent of the inmates indicated that the sentence was greater. Twenty-three per cent of the criminal justice officials, 46 per cent of the correctional officials, and 30 per cent of the inmates felt that there was a decrease in the sentence given by the judge.

The respondents were asked about the eligibility for good time of an offender while he is in pre-trial, pre-sentence, and pre-incarceration custody in jail. Credit for "jail time" for an offender in Texas is discretionary with the court of original jurisdiction. Good time allowances, however, are not included with the jail time which is credited on a day for day basis. Forty per cent of the criminal justice officials, 40 per cent of the correctional officials, and 87 per cent of the inmates indicated that an offender should be eligible to gain credit for good conduct while in jail prior to incarceration in the state department of corrections. Sixty per cent of the criminal justice officials, 60 per cent of the correctional officials, and 11 per cent of the inmates indicated that an offender should not earn time while in jail prior to incarceration.

The respondents were asked about good time allowances for an offender while on parole. An offender does not earn good time on parole in Texas. Twenty-seven per cent of the criminal justice officials, 26 per cent of the correctional officials, and 88 per cent of the inmates felt that a parolee should be eligible to earn good time allowances. Seventy-one per cent of the criminal justice officials, 74 per cent of the correctional officials, and 10 per cent of the inmates indicated that an offender should not be eligible to earn good time while on parole.

#### Variations in Response in Groups Studied

The great majority of the correctional officials indicated that the good time statute was adequate while both the criminal justice officials and inmates favored significant changes. The criminal justice officials indicated that the statute should be changed to restrict the eligibility of certain types of offenders from earning good time allowances particularly those sentenced as habitual offenders. A majority of the inmates favored the elimination of the good time statute and the use of an indeterminate sentence with a more liberal parole policy.

The majority of all three groups reported that the policy of good time allowances aids in maintaining control of the inmates within the institution and motivates the inmates to participate in institutional programs. The greatest divergence of opinion among the three groups concerned the administrative procedures used by correctional

authorities to forfeit an inmate's good time allowances. The majority of the inmates indicated that when an inmate loses his good time a forfeiture hearing should occur; that the inmate should be permitted to be present at the hearing; and that he should be permitted to call witnesses, cross examine the witnesses, and have an inmate representative or formal legal counsel assist him. The correctional officials rejected the concept of using witnesses at the hearing and having an inmate representative or formal legal counsel assist the inmate. They did, however, favor the use of a disciplinary hearing with the inmate present.

It is also interesting to note that the inmates indicated a more restrictive position than the correctional officials concerning the eligibility of certain types of offenders to receive good time allowances. This view is particularly evident when referring to sex offenders.

### CHAPTER III

#### LEGAL ASPECTS OF GOOD TIME

Traditionally, the courts have had a limited role in the intervention of correctional administration and treatment within state prisons. The courts reasoned that the correctional official is better qualified to make decisions concerning the treatment of prisoners and the administration of prisons. The federal courts, especially, have been reluctant to claim judicial authority in matters concerning state prisoners.

As to the early release of prisoners, the courts have consistently maintained that because the commitment was for a prescribed maximum, any reduction in the period of incarceration was not a right but a privilege which the inmate earned as a matter of grace. The awarding of good time allowances for good conduct has traditionally been considered simply an administrative decision and not subject to judicial review.

As to good time, the application of the rights-privileges varies from state to state. Three basic approaches can be identified. Some courts have held that good time allowances are strictly a matter of grace and can be forfeited at any time.<sup>41</sup> Another view expressed in Douglas v. King<sup>42</sup> is that while good time allowances become a part of the prisoner's sentence, the right to the good time allowances is contingent and becomes vested only after the inmate has earned the right by maintaining

good conduct in prison. The third view is that the good time statute confers an absolute right on the prisoner which becomes an inherent part of the sentence; that the offender is entitled to the good time allowances; and that his good time cannot be arbitrarily forfeited or denied.<sup>43</sup>

In 1950, a United States District Court for Pennsylvania ruled on a motion for a writ of habeas corpus from a federal inmate in the Federal Correctional Institution at Danbury, Connecticut. The prisoner contended that the revocation of his good time violated due process in that there was no compliance with the Administrative Procedure Act. The Court ruled that the writ of habeas corpus was premature; that the Administrative Procedure Act was not applicable; and that evidence established that there was no arbitrary, capricious, or fraudulent action by the Good Time Board which would entitle the petitioner to a writ of habeas corpus.<sup>44</sup>

The Court stated that good time allowance is in the nature of a privilege authorized by the legislature, which, when it is earned becomes a matter of right.<sup>45</sup> When a prisoner has complied with the good conduct statute, it is required that he be given credit for the good time allowances earned.<sup>46</sup> But until the time of his release the good time allowance is a privilege which is conditionally expressed by the statute.<sup>47</sup> In the instance of misconduct, all or any part of the good time allowances may be forfeited.<sup>48</sup> The good time allowance statute required

no agency hearing.<sup>49</sup>

The Court went on to state the often quoted principle that:

the prison system is under the administration of the Attorney General and not the District Courts. The Court has no power to interfere with the conduct of the prison or its discipline. It may discharge upon habeas corpus only when the petitioner is illegally detained, and will not interfere in a matter of this kind unless the prison authorities acted arbitrarily, capriciously, and fraudulently.<sup>50</sup>

There was no evidence that the prisoner had exhausted his administrative remedies.<sup>51</sup>

In 1966, the Federal District Court of the 4th Circuit in Virginia reiterated that the courts are reluctant to interfere with the conduct of correctional authorities, the enforcement of prison regulations, or the discipline of prisoners.<sup>52</sup>

In 1967, the United States District Court in Kansas, ruling on a petition by a federal prisoner seeking a writ of mandamus, held that prison officials will be given broad discretionary powers in carrying out their responsibilities and will not be interfered with unless their exercise of such discretion is arbitrary and capricious.<sup>53</sup> The Court also held that it will not consider the forfeiture or loss of good time claims of a prisoner unless its restoration would entitle the prisoner to immediate release. The Court would consider the case only after the prisoner had exhausted his administrative remedies



and it is factually disclosed that the action of the authorities was arbitrary and capricious.<sup>54</sup>

In Burnside v. Nebraska<sup>55</sup> a Federal District Court held that the authority of the federal court on a motion for a writ of habeas corpus to restore forfeited good time cannot be decided where the prisoner would not be eligible for release even if the good time allowances were restored. The Court cited a Supreme Court case which stated that:

... there is no warrant in either the statute or the writ for its use to envoke judicial determination of questions which could not affect the lawfulness of the custody and detention, and no suggestion of such a use has been found in the commentaries on the English common law. Diligent search of the digests before 1789 has failed to disclose any case where the writ was sought or used, either before or after conviction, as a means of securing the judicial decision of any question which, even if determined in the prisoner's favor, could not have resulted in his immediate release.<sup>56</sup>

In 1967, an inmate in the Nebraska Department of Corrections brought suit against the warden of the institution seeking a permanent injunction and damages in the amount of \$15,000.<sup>57</sup> The prisoner claimed that the forfeiture of his good time was illegal and void because the Nebraska statute allowing for good time allowances was "vague, overly broad and ambiguous," and thus violative of the Fourteenth Amendment guarantees of Due Process and Equal Protection of the Law. His motion for damages rested on the Civil Rights statutes for alleged violations of constitutional rights in applying the Nebraska statute

to his confinement. The Court ruled that the statute was not vague, overly broad nor ambiguous.

The Court also ruled on other aspects of the good time reductions stating that the allowances of good time and its forfeiture are strictly a matter of statute and dependent upon the provisions of the particular statute under consideration. The right to good time allowances is contingent until the time when an inmate with credit for the good time could be released. The granting or denial of such an allowance is discretionary with the executive office charged with the administration of the good time and its allowance is a matter of grace rather than a right. The Court stated:

The Nebraska diminution of sentence statute is also conditional grant only, and when the good time has not vested, the reduction or forfeiture of a diminution of sentence raises no constitutional issue. The crediting of good time at the time of admission is conditional only and is subject to forfeiture for disciplinary reasons. *States ex rel. Menard v. Nichols*, 167 Neb. 144, 91 N. W. 2d 308 (1958). This precrediting of good time amounts to no more than a bookkeeping entry and the good time must be fully earned before it becomes vested. under 29-2633 until the prisoner has fully complied with the disciplinary and good behavior requirements up to the time of his dismissal from the Nebraska complex.<sup>58</sup>

The Court also ruled that due process requirements are not applicable to forfeiture or revocation proceedings. It granted that administrative due process should be fair and that the inmate not be treated arbitrarily. The "hands off" doctrine was reinforced by the Court.



The petitioners and other inmates of penal institutions should realize that the penal and correctional institutions are under the control and responsibility of the executive branch of the government and that courts will not interfere with the conduct, management and disciplinary control of this type of institution except in extreme cases ... the matter of the internal management of prisons or correctional institutions is vested in and rests with the heads of those institutions operating under statutory authority, and their acts and administration of prison discipline and overall operation of the institution are not subject to court supervision or control, absent most unusual circumstances or absent a violation of the constitutional right.<sup>59</sup>

The Court was not concerned with interpretations of state laws that do not involve federal constitutional questions.

In Douglas v. King the Court affirmed a previous position on good time allowances stating that the right to good time under the federal statute "is merely contingent and does not become absolute or vested until the prisoner shall have earned the right by compliance with the statutory provisions."<sup>60</sup> In Pagliara v. Cox the same court stated that:

The allowance of good time, until earned for the entire term is a privilege, which is conditioned expressly by the statute, Sec. 710, Title 18 U.S.C.A., allowing it upon a record of conduct showing 'that he has faithfully observed all the rules and has not been subjected to punishment.' The existence or forfeiture of good time is in no sense dependent upon whether the misconduct also may be a criminal act.<sup>61</sup>

The same principles were applied to the state statutes. The Seventh Circuit Court of Illinois ruled that the statute governing good time allowances enters into all sentences; however, the "allowances were not a vested right but a conditional one, which, by the statute, becomes effective only when the prisoner, having conducted himself properly, has earned an allowance!"<sup>62</sup>

In 1967, a United States District Court in Virginia ruled on the question of legal counsel representing an inmate at a disciplinary hearing.<sup>63</sup> The prisoner had received a forfeiture of thirty days good time in addition to a six-month sentence for escaping. He claimed that the loss of good time was in excess of the power of the superintendent of the institution and that he should have been entitled to have counsel present at his hearing. The Court ruled that it would be impossible to provide counsel for every prisoner in this instance and that under the circumstances the lack of counsel was not a constitutional right. The Court also stated that the prisoner had not made any attempt to exhaust his state remedies. In May, 1969, the Eighth Circuit Court ruled that an inmate's misconduct which resulted in his being placed in solitary was an administrative matter and not one for the courts.<sup>64</sup> The prisoner claimed that he did not receive a hearing and that this was a violation of his constitutional rights.

The Court ruled that the lack of a hearing did not deprive an inmate of a fundamental constitutional right and that the Court would not interfere in internal prison administration.

In December, 1969, the United States District Court for the Northern District of New York began to guide federal court actions concerning prison administration and disciplinary procedures in a slightly different direction. This proved to be an indication of what was to follow.<sup>65</sup>

Eugene Rodriguez, an inmate in the New York Department of Corrections, filed a motion under the Civil Rights statutes complaining of loss of good time allowances. The prisoner claimed that he was denied due process and equal protection rights by the procedure in which his good time allowances were forfeited. The Prison Board also failed to forward the forfeiture decision to the Commissioner of Corrections as required by law.

The Court ruled that civil rights claims made by inmates alleging federal constitutional deprivation, if not frivolous on their face, are within the jurisdiction of federal courts. The Court held that there is no longer any doubt about an inmate bringing action under the Civil Rights Act<sup>66</sup> and judicial intervention into prison administrative procedures. The Court also held that the Due Process and Equal Protection processes of the Fourteenth Amendment follow prisoners into prison.<sup>67</sup> The Civil Rights statutes, when relied upon for federal intervention, do not require the exhaustion of state judicial

remedies.<sup>68</sup>

The Court ruled that the failure of the Prison Board to forward their decision, in writing, to the Commissioner when a forfeiture takes place was a substantial omission and deprives the inmate of his Due Process and Equal Protection rights under the Fourteenth Amendment.<sup>69</sup>

The Court noted that:

... there is full recognition by the federal courts that the primary responsibility for prison administration and discipline remains, and should remain, with the state administrative personnel, and that the federal courts are never inclined to reach out to intrude unless ... there is sufficient showing procedures and regulations exist that impair the constitutional rights of prisoners.<sup>70</sup>

This decision was overruled, initially, in the Second Circuit Court of Appeals.<sup>71</sup> The appeals court reversed the lower court's decision on the ground that release from custody was not an available remedy under the Civil Rights Act and that state remedies had not been exhausted. Another similar case decision was also overruled for the same reasons.<sup>72</sup>

In the Rodriguez decision the court stated that:

The federal court should refuse to interfere with internal state prison administration except in the most extreme cases involving a shocking deprivation of fundamental rights ... . At a minimum such cases should first be filtered through the state prison administrative process and the state courts.<sup>73</sup>

On rehearing with the full court of judges, the Circuit Court reversed their previous decision and affirmed the judgment of the District Court.<sup>74</sup> Following the recent Supreme Court decision of Wilwording v. Swenson<sup>75</sup> which ruled that habeas corpus is applicable to prison condition challenges; that the exhaustion of state judicial remedies is an "accommodation" to the state systems; that there is no need for repetitious state applications; and that the mere possibility of success in additional state proceedings does not bar federal habeas corpus, the majority of the Second Circuit Court of Appeals decided in favor of Rodriguez. In a majority opinion, one judge doubted that:

... the federal jurisdiction in cases involving prisoner rights is any more offensive to the state than federal jurisdiction in the area of police procedures for search, arrest and detention, or education, or welfare, or public housing.<sup>76</sup>

In Carter v. McGinnis<sup>77</sup> a Federal District Court for New York held that inmates held in segregation units were entitled to be informed of the evidence relied upon by the authorities to justify such segregation and the failure to provide a hearing was a denial of due process rights. If the evidence against the inmates confined in a segregation unit for violations of the rules and regulations of the institution was serious enough to impose confinement for thirty days or more, prison administrators were required to present evidence at a hearing with the inmate present.

A Federal District Court in Rhode Island also ruled that regulations governing disciplinary and classification procedures, negotiated by the parties in "arms-length," good faith bargaining would be adopted as an interim decree of the courts, which would retain jurisdiction for eighteen months to allow parties to establish a working scheme of enforcement of regulations and permit enough flexibility for necessary rule changes.<sup>78</sup> The ruling was brought about by a civil rights suit by an inmate in behalf of himself and other inmates raising issues relating to constitutionality and statutory permissibility of certain rules, practices, and conditions of life at the state penal institution.

In May, 1970, the Federal District Court for the Southern District of New York issued a ruling which was to greatly influence the administrative procedures to be followed for disciplinary hearings of inmates in the New York State Department of Corrections.<sup>79</sup> Martin Sostre, an inmate, brought a civil rights action against the Governor, state commissioner of corrections, and wardens of two New York state prisons. Sostre had been confined in solitary for over a year without a disciplinary hearing for various "political" activities.

Among the rulings handed down by the District Court were that a convicted felon incarcerated in a state correctional institution still maintains his rights to procedural due process and that basic constitutional rights

cannot be denied by correctional officials in the interest of administrative efficiency. The Court also ruled that because the state had not provided adequate administrative relief for Sostre, in that the commissioner was already aware of the violations of his constitutional rights, he was not required to seek further administrative remedies before seeking relief in the federal courts.<sup>80</sup> The correctional administrators could not unreasonably restrict the right of Sostre to seek relief in the courts.

Sostre had been held in solitary confinement for over a year without minimal due process rights. The Court stated that before an inmate receives punishment of such a nature he is entitled to: (1) written notice of the charges against him (in advance of the hearing) which designates the rule violated; (2) a hearing before an impartial official at which time the inmate may cross examine his accusers and call witnesses; (3) a written record of the hearing, decision, reasons, and evidence presented; and (4) the right to have a legal counselor or a representative present at the hearing to aid the inmate. The commissioner was ordered by the Court to provide guidelines, to be approved by the Court, for the procedures to be followed for disciplinary hearings and solitary confinement or punitive segregation.

On appeal the Second Circuit Court of Appeals in Sostre v. McGinnis<sup>81</sup> disagreed with the Federal District Court of New York. The Circuit Court did not stipulate a definite code of disciplinary procedure and disagreed with the District Court's conclusion that all of procedural elements set forth in Goldberg v. Kelly<sup>82</sup> are constitutionally required in a formal proceeding. The Court did reaffirm the position that due process requires that the inmate receive a notice of the charges and be able to be present at the disciplinary hearing to explain his actions.<sup>83</sup>

A short time after the Sostre v. Rockefeller<sup>84</sup> decision, the Federal District Court for the Northern District of New York in Kritsky v. McGinnis<sup>85</sup> restated its position on inmates seeking legal relief for alleged institutional violations concerning discipline and the loss of good time. The State of New York reiterated its argument for the need of the inmate to exhaust all state remedies and the federal courts lack of jurisdiction in state correctional administrative procedures.

Kritsky, a state prisoner, filed a motion based upon the Civil Rights statutes claiming that the forfeiture of 590 days of good time was a violation of his due process rights under the Constitution. The Court ruled that a discipline hearing must be given at a "meaningful time" and in a "meaningful manner." The Court stated that

"under the concepts of the present day, it has been stated the decision maker should state reasons for the determination, indicate the evidence relied upon, and an impartial decision makes it essential."<sup>86</sup> The Court relied upon the guiding influence of the Goldberg v. Kelly<sup>87</sup> decision in which the Supreme Court ruled that whenever a governmental action may deprive an individual of some substantial benefit, the basic protections of due process must be provided. In Goldberg, the Court stated that procedural due process requires an evidential pre-termination hearing before welfare payments may be discontinued or suspended. Kritsky's forfeited good time allowances of 590 days were restored and he was released to parole supervision under conditional release.

In Carothers v. Follette<sup>88</sup> the Federal District Court for the Southern District of New York restated the need for procedural due process in prison disciplinary hearings. The court maintained that because good time allowances affect the amount of time that a prisoner is incarcerated the forfeiture or denial of good time allowances is a matter serious enough in nature to justify federal court jurisdiction over claims under the Civil Rights statutes. Although the Court recognized the difficulties involved in a prison administration, it stated:

... we cannot accept defendants contention that the essential elements of fundamental procedural fairness -- advance notice of any serious charge and an opportunity to present evidence before a relatively objective tribunal -- must be dispensed with entirely because of the need for summary action or because the administrative problems would be too burdensome. Although a prisoner does not possess all of the rights of an ordinary citizen he is still entitled to procedural due process commensurate with the practical problems faced in prison life.<sup>89</sup>

In Nolan v. Scafati<sup>90</sup> a slightly different interpretation was taken by a Federal District Court in Massachusetts concerning the right of an inmate to have legal counsel present at a disciplinary hearing, cross examine witnesses, and to call his own witnesses. The Court denied relief to the inmate and stated that:

Whatever may be the rights of persons who have the full freedoms of civic life, those who have been placed under the control of a prison authority are not entitled to the full panoply of a trial before disciplinary steps are taken. When society places a man in prison it has a most important interest in preserving the executive authority of the prison superintendent. While the warden is not to be an arbitrary autocrat, he has no need to listen to quibbles and quiddities before he exercises his commanding authority to secure both the outside community and prison community from danger, reasonably apprehended.

In short, a prisoner does not have a constitutional right to a lawyer when the prisoner appears before an internal disciplinary committee of the prison.<sup>91</sup>

On the matter of confronting and cross examining a witness, the Court stated that:

... cross examination of a superintendent, a guard or a fellow prisoner would almost inevitably go beyond the usual consequences of such probing in a court. It would tend to place the prisoner on a level with the prison official. Such equality is not appropriate in prison. And it is hardly likely that in the prison atmosphere discipline could be effectively maintained after an official has been cross examined by a prisoner. There are types of authority which do not have as their sole or even principal constituent, rationality. Parents, teachers, Army commanders, and above all, prison wardens have the right to depend to a large extent (though not arbitrarily) upon habit, custom, intuition, common sense, not reduced to express principles, and other forms of judgment based more on experience than on logic . . . .<sup>92</sup>

On appeal to the United State Court of Appeals, however, the inmate was granted relief. The Court ruled that "while all procedural safeguards provided citizens charged with a crime cannot and need not be provided to prison inmates charged with a violation of a prison disciplinary rule, some assurances of fundamental fairness are essential when substantial individual interests are at stake."<sup>93</sup>

The federal courts continue to maintain that unless an inmate suffers a violation of his constitutional rights, they are very reluctant to interfere with internal administration, conditions, or discipline in prisons.<sup>94</sup> However, the Court will intervene in conduct of prison discipline procedures when punitive sanctions are imposed arbitrarily and without reasonable justification.<sup>95</sup>

In Bundy v. Cannon<sup>96</sup> a District Court of Maryland cited the Second Circuit's ruling in Sostre v. McGinnis<sup>97</sup> concerning the required procedures in a disciplinary hearing. The complaint of the inmates challenged the constitutionality of the proceedings which resulted in the loss of good time allowances. The Court's opinion called for a fundamental due process procedure in which the accused inmate may (1) receive adequate notice of the charges against him, (2) an opportunity to cross examine the testimony presented against him, (3) be present at the hearing and present evidence on his own behalf, and (4) a hearing before a relatively objective and impartial tribunal.

In Clutchette v. Procunier<sup>98</sup> the United States District Court for the Northern District of California explored the possible implications of the Miranda v. Arizona<sup>99</sup> ruling on prison disciplinary proceedings. The Court ruled that when a prisoner is charged with a violation that may be referred to the district attorney for prosecution in the state courts, he is entitled to basic constitutional rights under the Fifth Amendment. The Court stated that, "Procedural due process must be obtained whenever the individual is subject to grievous loss at the hands of the state or its instrumentalities."<sup>100</sup> They defined "grievous loss" as (1) confinement in the adjustment center or segregation, (2) punishment which may increase a prisoner's sentence,

which would include forfeiture or denial of good time allowances; (3) confinement in isolation for longer than 10 days, (4) fine or forfeiture of wages; and (5) charges which may be referred to the district attorney for criminal prosecution.

Following the Clutchette decision of the District Court in California, a Federal District Court in Virginia ruled on a class action by the inmates of the Virginia Department of Corrections.<sup>101</sup> Among the complaints of the inmates was that the procedures used for the forfeiture and restoration of good time allowances were arbitrary and unconstitutional.

In its ruling the District Court relied on the language of the Supreme Court in Goldberg v. Kelly<sup>102</sup> and also took notice of the opinions of its own circuit<sup>103</sup> as well as the Clutchette ruling. The Court required that inmates receive: (1) prior written notice of charges, (2) a hearing before an impartial tribunal, (3) presentation of witnesses, (4) cross examination of the witnesses, (5) counsel or informal legal representative, and (6) a decision based solely on the evidence presented at the hearing.<sup>104</sup> This opinion in effect expanded on previous decisions concerning due process rights contained in Sostre, Bundy, and Clutchette. The Court concluded that these due process rights were necessary and would not interfere with "legitimate" correctional administration.

There have been other recent decisions in the federal courts which have influenced the eligibility of convicted offenders to receive good time allowances. The decisions have been related to issues concerning double jeopardy and the eligibility of offenders to earn good time allowances during pretrial and presentence incarceration.

In Benton v. Maryland<sup>105</sup> the Supreme Court held that the Fifth Amendment guarantee against double jeopardy is enforceable against the states through the Fourteenth Amendment. This guarantee protects against multiple punishment which is brought to question when a man receives a new sentence arising from the same offense. In a landmark case of Ex parte Lange, the Supreme Court stated:

If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense.<sup>106</sup>

In North Carolina v. Pearce<sup>107</sup> the Supreme Court ruled on the question whether, in computing a new sentence, the Constitution requires that in computing the sentence imposed after conviction upon retrial, credit must be given for the time served under the original sentence.

The Supreme Court maintained that the guarantee against multiple punishment is violated when time already served on a sentence is not fully "credited" in giving a new sentence upon a new conviction for the same offense.

We hold that the constitutional guarantee against multiple punishments for the same offense absolutely requires that punishment already exacted must be fully "credited"



in impairing sentence upon a new conviction for the same offense. If, upon a new trial, the defendant is acquitted, there is no way the years he spent in prison can be returned to him. But if he is reconvicted, those years can and must be returned -- by subtracting them from whatever new sentence is imposed.<sup>108</sup>

The time credited must also include all good time allowances earned during the original sentence.

In Allen v. Henderson<sup>109</sup> the Fifth Circuit Court of Appeals clarified the Pearce decision in regards to crediting of good time earned on an original sentence and applied the ruling retroactively. An offender, who had his original sentence of twenty years vacated, received a new sentence of fifteen years. He had already served five years on the original sentence and was given credit for the calendar time. The Court, however, did not take into consideration the time earned because of good conduct. In referring to the Pearce decision, the Fifth Circuit instructed that the offender also be given credit for all good time allowances earned on the previous sentence. The Court also expanded on the Pearce decision.

After due consideration, we now hold that the retroactive application of Pearce would be fully consonant with the reasoning used by the Supreme Court in other cases involving the question whether new constitutional principles were to be given retroactive or prospective application.<sup>110</sup>

In Royster v. McGinnis<sup>111</sup> a three judge District Court for New York held that a state statute which denied state prisoners good time credit for the period of their presentence incarceration in county jails deprived prisoners of equal protection and was unconstitutional. The prisoner

claimed that the denial of good time allowances for presentence incarceration was a violation of the Fourteenth Amendment by discriminating against those prisoners who cannot afford or are not granted bail prior to trial and sentencing. The District Court reasoned that because the county jail inmates and state prisoners, under certain circumstances, are given good time allowances for good conduct, all inmates serving indeterminate sentences in state departments of corrections prior to September 1, 1967, who are otherwise eligible for good time allowances, shall receive good time allowances for time spent in presentence incarceration.<sup>112</sup>

The United States District Court for Southern Ohio has since held that state prisoners are entitled to be credited for all pretrial and presentence incarceration, including all good time allowances on their sentence. Using the same reasoning as in Royster, the Court ruled that the Ohio statute which denies such time "discriminates against the poor and thus deprives them of their rights under the Equal Protection Clause of the Fourteenth Amendment."<sup>113</sup>

In January, 1973, the United States Court of Appeals for the Fifth Circuit ruled that a prisoner may receive good time allowances while incarcerated in the county jail pending his appeal.<sup>114</sup> Again using the same rationale as in the previously mentioned cases, the Court found that



because an offender cannot make bond he was forced to remain in jail. The Court stated that:

... to deny a convicted felon good time while he is in jail pending the appeal of his case when at the same time allowing such good time to convicted felons who have not appealed, and allowing good time to prisoners serving misdemeanor sentences in jail, is clearly a denial of the equal protection of the laws which abridge the privileges of a citizen of the United States and deprives him of liberty without due process of law. The enforcement of such laws puts a premium on not appealing sentences of conviction and constitutes a threat to a convicted person that if he appeals he will lose good time he might otherwise have. This cannot be countenanced.<sup>115</sup>

**CONTINUED**

**1 OF 2**

## CHAPTER IV

### CONCLUSIONS AND RECOMMENDATIONS

The assumptions on which the correctional system in the United States rests today are being seriously questioned, not only by the courts and correctional administrators, but by concerned individuals outside the system. The challenges facing corrections have been increasingly dramatized due to prison riots and the increasing involvement of federal courts in decisions concerning correctional administration and the treatment of inmates in state prisons.

Traditionally correctional administrators have held almost absolute authority over the offender in prison. The offender, having lost many fundamental rights upon conviction, was subject to the rules and regulations of the correctional institution. Thus, during the period when they were relatively free from the intervention of the courts, correctional authorities possessed a great amount of discretion in determining the conditions under which the offender lived in prison.

... after the pronouncement of guilt, the offender is ushered into a procedural no man's land. Abetted by vague or non-existent statutes and a reluctance by the courts to interfere, sentencing and correctional authorities have been free to fashion their own notions of justice. The call for a due process approach to corrections is being urged - or employed - in order to produce visibility and accountability where

now it does not exist; to seek reliability in fact-finding and rationality in conclusions; and to correct the abuses that are inherent in the mass processing of offenders (Cohen, 1969, p. 105).

There has been, however, a gradual attenuation of the discretionary powers of correctional authorities due to the judicial intervention of the federal courts into decisions concerning the discipline and release of offenders.

Perhaps one of the most important correctional decisions made after an offender has been sentenced and incarcerated is that which affects his release (Task Force Report: Corrections, 1967). An offender becomes eligible for release on parole when he has served some fraction of his sentence or when he has served his maximum sentence for discharge. The amount of time to be served by the offender to be eligible for parole or discharge can be greatly reduced by the crediting of good time allowances.

This study has examined the statutory and administrative provisions which govern good time allowances in state departments of corrections. The effect of good time allowances on the reduction of sentences has also been examined. Court decisions determining the constitutional and procedural requirements for the administration of good time allowances has also been discussed.

From the survey of each state department of corrections it was found that forty-six states, the District of Columbia, and Guam have statutes providing for good time allowances for adult felony offenders. California, Hawaii, Utah, and Pennsylvania do not have statutes providing for good time allowances.

The authority for granting good time allowances is derived from the good time statute which stipulates the amount and applicability of the reductions. The responsibility for granting good time allowances generally rests with the director of corrections. In a few states the responsibility may be that of the parole board.

There are four basic procedures which govern the method by which good time allowances are applied to the offender's sentence. They are: (1) good time may be allotted in a "graduated" reduction in which an inmate receives increased allowances with each year served; (2) good time may be credited as a "flat" rate of reduction in which a certain amount of good time is credited to an offender's sentence depending on the length of the maximum sentence; (3) good time allowances are granted at a "fixed" rate in which a specified amount of good time is granted to every inmate regardless of the length of sentence or time served; and (4) the "graded" or classification system in which inmates placed in a particular grade earn a certain amount of good time for that grade.

The eligibility of an offender to earn good time allowances is often determined by administrative policy rather than by statutory provisions. There is no uniform policy of granting good time allowances to inmates in various stages of custody or conditions of incarceration. In Illinois, an offender may be eligible to earn good time allowances from the date of arrest through eventual incarceration and parole. In Indiana, an offender is eligible to earn good time allowances only during incarceration in the state prison. Some correctional officials have reasoned that it is not logical for offenders to receive good time allowances for the time that they are not in actual custody of the department of corrections. The recent federal court rulings of Royster v. McGinnis<sup>116</sup> and Pruett v. Texas,<sup>117</sup> however, have indicated a trend of allowing offenders to earn good time allowances for periods of custody other than in the department of corrections.

In fifteen states an offender is eligible for good time allowances while on parole. The granting of good time to an offender who is serving parole is questionable. It is expected that an offender on parole will maintain good conduct. His continuation and eventual release from parole is based on his conduct and adequate adjustment in the community. If he fails to

follow the conditions of his parole it can then be revoked. The policy of good time allowances on parole serves no useful purpose other than to reduce the period of supervision.

There are also statutory restrictions in some states which preclude offenders who have been convicted of particular offenses or have received a certain type of sentence from receiving good time allowances while incarcerated. In many states offenders receiving life sentences are not eligible to receive good time. Restrictions are also placed on offenders convicted as sex offenders or as habitual offenders in a few states. If, as many correctional administrators have consistently maintained, the policy of good time allowances is used to reward the offender in prison for good behavior and active participation in rehabilitation programs, the arbitrary exclusion of certain types of offenders from receiving good time allowances only impedes the scientific development or rational approach to the individualization of treatment within the institution. To preclude a certain type of offender from earning good time ignores the reality of the prison environment and the need for tools of control and motivation within the prison community for all offenders. As one inmate so succinctly commented when evaluating a state in which to commit a felony offense:

If you choose Indiana, John Q., you're a sucker! Any con in the know would go South and sweat and toil on the road gang. Because he knows that if he keeps his nose clean, he will get out in about a third of the time that it would take him up North. He knows that there is no good time given on an indeterminate sentence in Indiana, whereas North Carolina gives good time on all sentences if you earn it... . In the meantime, John Q. Citizen, my advice stands. To you and all of my thieving friends, I say, go South, where the livin' ain't easy but they cut you loose a hell of a lot faster (Griswald, Misenheimer, Powers & Tromanhauser, 1970, p. 78, 83).

The good time statute in Indiana has since been amended to include good time allowances on an indeterminate sentence but the implications remain the same.

Good time allowances are credited to an offender's sentence by various methods depending on the provisions of the good time statute. In most states the allowances are credited to the maximum sentence to advance discharge or conditional release. In some states good time is also applied to the maximum sentence to advance parole eligibility or to the minimum of an indeterminate sentence to advance parole eligibility.

The methods by which the good time allowances are earned and credited to a sentence are often determined by administrative policy rather than by statute. In some cases the language of the statute states that good time allowances shall be credited to an inmate's sentence by the week, or month, as they are earned. In

most states, however, the inmate is credited with the maximum possible amount of good time that he could earn on his sentence when he is received into the institution. A tentative parole eligibility date or discharge date is set. The date is then adjusted if a forfeiture or reclassification which would affect the rate of good time earning occurs. The granting of good time allowances has become an automatic bookkeeping procedure to facilitate the inmate records keeping of the department of corrections and the parole board.

In a sense then the theory of using good time as a positive incentive for good behavior has been restructured to form a negative approach in which the loss of good time occurs as a punishment for misconduct. The tendency then is to reflect a record of no misconduct rather than a record of particularly good conduct. Most departments of corrections also provide further incentives to the inmate in the form of additional or "extra" good time allowances. Extra good time may be earned by the inmate for performing special services or for meritorious conduct. These allowances are usually granted to the inmate by the month as they are earned and greatly aid in reducing his period of incarceration. In practice the granting of additional good time allowances conforms to the philosophy of rewarding an inmate for good behavior rather than becoming an automatic reduction for just "doing time" with no record of misconduct.



When a convicted offender has his sentence vacated and receives a new sentence, the time served on his original sentence is applied to the new sentence including all good time allowances earned. Many of the states indicated that the good time allowances earned on the original sentence were not credited to the new sentence. The recent court decisions of North Carolina v. Pearce<sup>118</sup> and Allen v. Henderson<sup>119</sup> have clearly stated that the time earned on an original sentence, including all credit for good behavior, will be applied to the new sentence received. In the Allen decision the Fifth Circuit held that the principle set out by the Supreme Court relating to credit on a new sentence for time served should be applied retroactively. The fact that these decisions are apparently not taken into consideration by many departments of corrections indicates the arbitrary manner in which good time allowances are provided to offenders.

The federal and state courts' "hands off" doctrine has been a traditional approach to corrections, especially decisions concerning forfeiture of good time allowances. The decision to grant good time allowances has traditionally been viewed as purely administrative and, therefore, not judicially reviewable. But because the allowance or forfeiture of good time has a direct and substantial effect on the release of the inmate, there is currently a strong effort to introduce elements of procedural due process in the

administrative functions of granting, forfeiting, denying, and restoring good time allowances. The President's Commission on Law Enforcement and the Administration of Justice has stated that some basic elements of due process should apply at a forfeiture hearing.

Decisions regarding the withholding or forfeiture of good time credit generally differ from the parole decision in that they turn solely on the offender's behavior during his period of imprisonment. Good behavior entitles him to early release regardless of anyone's judgment as to his potential for living a law-abiding life in the community. He should therefore have an opportunity to challenge charges of misconduct. Where such charges may lead to a substantial loss of good time and a resultant increase in the actual length of imprisonment, the prisoner should be given reasonable notice of the charges, full opportunity to present evidence and to confront and cross examine opposing witnesses, and the right to representation by counsel (Task Force Report: Corrections, 1967, p. 86).

A review of the state departments of corrections has shown that there are few procedural safeguards provided in the forfeiture or denial of good time allowances in many of the correctional institutions. The statutes in most states provide for the forfeiture of good time allowances but do not define the procedures which should be followed in a forfeiture proceeding or the amount that can be forfeited. They make only a vague comment about all or part of the good time being forfeited for misconduct.

The authority for the granting or forfeiting of good time is generally that of the director of corrections or the state board of paroles. Administrative policy, however, expands on the statutory provisions and often designates the warden or an institutional classification committee as the responsible agent for granting and forfeiting good time allowances. The recommendations of the committee or the warden are sent to the director of corrections or parole board for final approval.

In most states the accused inmate receives a notice of the charges against him and is brought before a disciplinary hearing. Many of the states also permit the inmate to have a representative at the hearing to assist him. Very few states, however, allow the inmate to be represented by counsel. The inmate may call witnesses to the hearing to present evidence in his behalf in most state departments of corrections. He also receives a notice of the forfeiture decision after it has been approved by the warden or director of corrections. He may then appeal the decision to the director or parole board. He is not, however, in all departments of corrections, allowed access to the courts to seek legal relief of the forfeiture decision.

Almost every state provides for the restoration of good time once it is forfeited. This responsibility usually rests with the warden or director of corrections upon recommendation from the institutional classification committee or correctional officers within the institution. Only Louisiana, Montana, and Iowa do not provide for the restoration of good time once it is forfeited.

In most state departments of corrections an inmate may have his good time restored by maintaining a good conduct and work record for a certain period of time. In many states this period is for at least six months. The opportunity to regain lost good time allowances is a strong incentive for an inmate to maintain a record of good conduct.

The extent to which procedural due process requirements should apply to forfeiture hearings is not clear. It is clear, however, that the loss of good time allowances can greatly influence the inmate's length of incarceration. Because of this, minimal due process would require an adjudication hearing at which the accused inmate can confront his accusers and respond to the charges. The Manual of Correctional Standards has recommended that:

Every infraction of discipline should be reported and the inmate given a hearing before any punishment is administered . . . . A hearing should take place as soon as practical after the offense is reported . . . .



At the hearing the inmate reported should be given a full opportunity to state his case and, if the offense is a serious one and he claims that witnesses could establish his innocence or bring out important instigating factors, such claims should be carefully investigated (Manual of Correctional Standards, 1966, p. 409-410).

The procedural requirements for prison disciplinary hearings should not be too restrictive. To do this would seriously impair the need for efficient and speedy disciplinary action. There are, however, certain requirements which should be applied to a disciplinary hearing in which the forfeiture of good time is imposed.

The first requirement is the advance notice in writing of the charges against the accused inmate and the opportunity to prepare a defense. The advance notice should include an explanation of the charges and the date and time at which a hearing will take place.

A second requirement is a hearing before an impartial committee. The members should be senior correctional officers or administrators. In no instance should an officer who brought the charges or investigated the charges be on the committee. An opportunity should be given to the inmate to be heard at the hearing and to respond to the charges against him. Because the charges against the inmate could result in what the courts have described as a "grievous loss," he should also be given an opportunity to confront and cross examine witnesses and present evidence in his behalf.

A third requirement is that a record of the discipline proceeding should be kept which should include testimony presented, the decision of the board, and an explanation of the decision which was made by the board. An automatic review of the committee's decision should be made by the warden and the director of corrections to determine the suitability of the punishment, especially if a forfeiture or denial of good time occurs.

Access to the courts to gain judicial review of administrative decisions has been limited by the inmates relative isolation and inability to obtain formal legal counsel. The opportunity should exist for all inmates to seek judicial review for grievances, particularly those concerning the forfeiture or denial of good time allowances.

An additional requirement is the opportunity of the accused inmate to select an inmate representative to assist him at the hearing. If possible legal counsel should be provided. This, of course, would be one of the most difficult elements of due process requirements because of the practical problems involved in obtaining counsel for all disciplinary hearings. The practical considerations of manpower and money would preclude the possibility of legal counsel for all but the most serious cases. There are instances when the charges against the inmate constitute a criminal act which could be prosecuted in the courts. It is necessary then for him to

have legal assistance in the investigation of his case and adequate preparation of a defense.

The number of offenders incarcerated in prisons, penitentiaries, and correctional institutions in the United States is increasing yearly. By 1975, it is estimated that there will be approximately 1,841,000 offenders involved in the correctional process. Many will be adult felons. An increase in the now overpopulated prison system will only magnify the problems of correctional administrators, particularly the conflict between the rehabilitative and custody goals of correctional administration. As our inmate population increases the concomitant problems of custody and security within the institution will also increase.

The traditional approach of corrections has been to consider the granting of good time allowances a privilege rather than a right. The courts have greatly reduced this distinction looking instead at whether or not the action taken or contemplated will result in a "grievous loss" to the offender. Good time allowances have become an inherent part of the offender's sentence. They are subject to loss only after following procedural guidelines set out in recent court decisions defining due process in a prison setting.

A danger in the use of good time allowances is that they become too automatic, too mechanical. As a result many correctional officials have called for the abandonment of good time allowances and the increased use of the indeterminate sentence with a more active parole policy. The purposes of good time allowances as they are used today might be accomplished with the same amount of consistency by using an indeterminate sentence if there existed an adequate and enlightened parole board functioning within a modern correctional system. If an indeterminate sentence is to replace the use of good time allowances as an incentive for control and motivation of inmates within the institution, there needs to be a more efficiently administered parole board with a flexible parole policy. Until then, the need for control and motivation in a correctional system today still remains, and this need is best met by the granting of good time allowances to the incarcerated offender.

FOOTNOTES

FOOTNOTES

<sup>1</sup> Texas Code of Criminal Procedure, Art. 42.12c, Sec. 15, Para. A.

<sup>2</sup> Vernon's Revised Civil Statutes of Texas, Art. 61842.

<sup>3</sup> Letter to Grady Hazlewood from Paul J. Gernest, Chairman of the Board of Probation and Parole, Harrisburg, Pennsylvania, March 9, 1970.

<sup>4</sup> Sostre v. Rockefeller, 312 F. Supp. 863 (1970), Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971).

<sup>5</sup> Figures compiled from Inmate Records Division of the Texas Department of Corrections.

<sup>6</sup> Figures compiled from Inmate Records Division of the Texas Department of Corrections.

<sup>7</sup> Ariz., Colo., Conn., Del., Fla., Ga., Ill., Ind., Iowa, Kan., Mich., Minn., Miss., Nebr., Nev., N.J., N.M., N.Dak., Okla., S.Dak., Tenn., Wis.

<sup>8</sup> Rhode Island grants only one day a month on a one year sentence and a maximum of five days a month on a five year sentence or greater. Oregon grants a reduction of five days a month on a six month to one year sentence and fifteen days a month on any sentence of one year or greater.

<sup>9</sup> Ala., Alas., D.C., Ida., Mass., Ohio, Ore., R.I., W.Va.

<sup>10</sup> Ky., La., Me., Mo., N.H., S.C., Vt., Va., Wash.

<sup>11</sup> Ala., Iowa, Ky., La., Miss., Mo., N.M., Okla., Ore., R.I., S.C., Va., W.Va.

<sup>12</sup> Ala., Ariz., Ark., Colo., Conn., D.C., Del., Fla., Ga., Ill., Ind., Iowa, Kan., Ky., La., Me., Md., Mass., Mich., Minn., Mont., Nebr., Nev., N.H., N.J., N.M., N.C., N.Dak., Ohio, Okla., Ore., R.I., S.C., Tenn., Tex., Vt., Va., Wash., W.Va., Wis., Wyo., Federal Bureau of Prisons.

- <sup>13</sup>Alas., Ida., Miss., Mo., N.Y., Vt., Wyo.
- <sup>14</sup>Ala., Alas., Ariz., Colo., Conn., Del., D.C., Fla., Ga., Ida., Ill., Iowa, Kan., Me., Md., Mass., Mich., Miss., Mo., Mont., Nebr., N.H., Nev., N.J., N.M., N.C., N.Dak., Okla., Ore., R.I., S.C., Tenn., Tex., Vt., Va., Wash., W.Va., Wis., Wyo., Federal Bureau of Prisons.
- <sup>15</sup>Ark., Ind., Ky., La., Minn., N.Y., Ohio, S.Dak.
- <sup>16</sup>Ala., Colo., Mass., Miss., Mo., N.H., Nev., N.M., Okla., R.I., Tex., Va.
- <sup>17</sup>Ala., Ind., Kan., Me., Mich., Mo., Nebr., Nev., N.Dak., N.Y., Wash., Wyo.
- <sup>18</sup>Alas., Ariz., Ark., Colo., Conn., Del., Fla., Ga., Ida., Ill., Iowa, Ky., La., Md., Mass., Mich., Minn., Mont., N.H., N.J., N.M., Ohio, Okla., R.I., S.C., S.Dak., Tenn., Tex., Vt., Va., W.Va., Wis.
- <sup>19</sup>Ark., Ind., Mass., Mich., Mo., Nev., N.J., N.M., N.C., N.Dak., Okla., Tenn., Va., Wash., Wis.
- <sup>20</sup>North Carolina v. Pearce, 89 S.Ct. 2072 (1969).
- <sup>21</sup>Ark., Colo., Conn., Fla., Ga., Ida., Ind., Miss., Me., Mo., N.J., N.Y., Okla., Ore., R.I., S.C., Tenn., Wash., W.Va.
- <sup>22</sup>Ala., Alas., Colo., Ga., Ida., Ind., Iowa, Ky., Mass., Mich., Minn., Mo., Nebr., N.M., N.Y., N.C., N.Dak., Ohio, Ore., R.I., S.C., S.Dak., Va., W.Va., Wyo.
- <sup>23</sup>Alas., Iowa, Me., Mich., Minn., N.Dak., Ore., W.Va., Wis.
- <sup>24</sup>La., Miss., N.J., N.C., Tex., Wash.
- <sup>25</sup>Alas., Iowa, La., Miss., N.J., N.Y., Ore., Tex., Wyo.
- <sup>26</sup>Ark., Fla., Ga., Ind., Tenn., Va., Wash.
- <sup>27</sup>Colo., Conn., Del., Ida., Ill., Kan., Ky., La., Md., Mass., Minn., Mo., Mont., Nebr., Nev., N.H., N.M., N.Dak., Ohio, Okla., R.I., S.Dak., Vt., Wis.
- <sup>28</sup>Iowa, La., Me., Wis.

<sup>29</sup>Federal Bureau of Prisons Policy Statement 7400 6A, Withholding, Forfeiture and Restoration of Good Time, August 16, 1971.

<sup>30</sup>Revised South Carolina Department of Corrections Inmate Guide, Disciplinary Procedures, Sec. II, 12 (1972).

<sup>31</sup>Ala., Alas., Colo., Ga., Ind., Me., Md., Mass., Mich., Mo., N.H., N.C., Ore., R.I., S.Dak., Tex., Vt., Va., W.Va.

<sup>32</sup>Ark., Conn., Del., Fla., Ida., Minn., N.C., Ohio, S.C., Wis.

<sup>33</sup>Ariz., Ark., Ill., Ind., Ky., Md., Mass., Mo., Nebr., N.M., Ore., S.C., Tenn., Tex., Wash., Wyo.

<sup>34</sup>Alas., Conn., Del., Fla., Ga., Kan., Me., Mich., Minn., Miss., Nev., N.H., N.C., N.Dak., Ohio, Okla., R.I., S.Dak., Vt., W.Va., Wis.

<sup>35</sup>Ala., Alas., Ariz., Ark., Conn., Del., Fla., Ida., Ill., Kan., Md., Mass., Mich., Miss., N.H., Nebr., Nev., N.M., N.C., N.Dak., Ohio, Ore., R.I., S.C., S.Dak., Tenn., Vt., Va., Wyo.

<sup>36</sup>Colo., Ga., Ind., Iowa, La., Me., Mo., Mont., N.J., N.Y., Okla., Tex., W.Va.

<sup>37</sup>Ala., Del., Fla., Ill., Kan., La., Me., Mo., Mont., Nebr., Nev., Ore., S.Dak., Tenn., Wis., Wyo.

<sup>38</sup>Ha., Ind., Iowa, Penn., R.I., Utah.

<sup>39</sup>Ha., Ill., Ind., Iowa, Kan., Ky., Mass., Mich., Mo., Ohio, Penn., R.I., S.Dak., Utah, Vt., Wis.

<sup>40</sup>Alas., Ariz., Del., Ha., Ind., Kan., Me., Mass., N.H., N.M., Penn., R.I., S.Dak., Tenn., Utah, W.Va.

<sup>41</sup>Graham v. Thompson, 246 F.2d 805 (10th Cir. 1957).

<sup>42</sup>Douglas v. King, 110 F.2d 911 (8th Cir. 1940).

<sup>43</sup>Dowd v. Sims, 95 N. F.2d 628 (1950), United States ex rel. Lashbrook v. Sullivan, 55 F. Supp. 548 (1944).

<sup>44</sup>Lesser v. Humphery, 89 F. Supp. 474 (1950).

<sup>45</sup>Carroll v. Squier, 320 U.S. 793 (9th Cir. 1943).

<sup>46</sup>Bickel v. Hiatt, 66 F. Supp. 748 (1946).

- <sup>47</sup>United States ex rel. Hurwitz v. Alexander, 327 U.S. 764 (1946), Grant v. Hunter, 166 F.2d 673 (10th Cir. 1948).
- <sup>48</sup>Gray v. Swope, 28 F. Supp. 822 (1939), United States ex rel. Jacobs v. Barc, 141 F.2d 480 (6th Cir. 1944).
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- <sup>50</sup>Lesser v. Humphery, 89 F. Supp. 474, 476 (1950).
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- <sup>81</sup>Sostre v. McGinnis 442 F.2d 178 (2d Cir. 1971).
- <sup>82</sup>Goldberg v. Kelly, 397 U.S. 254 (1970).
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- <sup>90</sup>Nolan v. Scafati, 306 F. Supp. 1 (1969).
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- <sup>92</sup>Nolan v. Scafati, 306 F. Supp. 1, 4 (1969).
- <sup>93</sup>Nolan v. Scafati, 430 F.2d 548, 549 (2d Cir. 1970).
- <sup>94</sup>Burns v. Swenson, 430 F.2d 771 (8th Cir. 1970),  
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- <sup>95</sup>Dabney v. Cunningham, 317 F. Supp. 57 (1970).
- <sup>96</sup>Bundy v. Cannon, 328 F. Supp. 165 (1971).
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- <sup>98</sup>Clutchette v. Procnier, 328 F. Supp. 767 (1971).
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- <sup>101</sup>Landman v. Royster, 333 F. Supp. 621 (1971).
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- <sup>105</sup>Benton v. Maryland, 395 U.S. 784 (1969).
- <sup>106</sup>Ex parte Lange, 21 L.Ed. 872.
- <sup>107</sup>North Carolina v. Pearce, 89 S.Ct. 2072 (1969).
- <sup>108</sup>North Carolina v. Pearce, 89 S.Ct. 2072, 2077 (1969).
- <sup>109</sup>Allen v. Henderson, 434 F.2d 26 (5th Cir. 1970).
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- <sup>117</sup>Pruett v. Texas, \_\_\_\_\_ F.2d \_\_\_\_\_ (5th Cir.  
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APPENDIX A  
GOOD TIME ADMINISTRATION QUESTIONNAIRE

Appendix A

Good Time Administrative Questionnaire

Responding Agency : \_\_\_\_\_

Are good time allowances currently made in your Department of Corrections for adult offenders:

\_\_\_\_\_ Yes \_\_\_\_\_ No

Under what authority are good time allowances provided:

\_\_\_\_\_ By statute

\_\_\_\_\_ By written policy

\_\_\_\_\_ By informal procedure

Which of the following has the immediate responsibility for granting good time allowances in your state adult correctional institutions?

\_\_\_\_\_ Warden of institution

\_\_\_\_\_ Director of Classification and/or Treatment

\_\_\_\_\_ The Director/Superintendent of the state correctional system

\_\_\_\_\_ Other (please specify) \_\_\_\_\_

Which of the following has immediate responsibility for forfeiture or denial of good time allowances in your state adult correctional institutions?

\_\_\_\_\_ Institutional discipline committee

\_\_\_\_\_ Warden of institution

\_\_\_\_\_ Director of Classification and/or Treatment

\_\_\_\_\_ The Director/Superintendent of the state correctional system

\_\_\_\_\_ Other (please specify) \_\_\_\_\_

Which of the following has immediate responsibility for restoring good time allowances which have been forfeited?

- \_\_\_\_\_ Institutional discipline committee
- \_\_\_\_\_ Warden of institution
- \_\_\_\_\_ Director of Classification and/or Treatment
- \_\_\_\_\_ The Director/Superintendent of the state correctional system
- \_\_\_\_\_ Other (please specify) \_\_\_\_\_

Please check the conditions under which an inmate is eligible to earn good time allowances.

- \_\_\_\_\_ Time spent in a city or county jail waiting to be tried
- \_\_\_\_\_ Time spent in a city or county jail waiting for a decision on his appeal
- \_\_\_\_\_ Time spent in a city or county jail while waiting to be transferred to a state adult correctional institution
- \_\_\_\_\_ Time spent in a city or county jail on a bench warrant
- \_\_\_\_\_ Time spent in a hospital on a medical reprieve
- \_\_\_\_\_ Time spent in a state correctional institution only
- \_\_\_\_\_ While on probation
- \_\_\_\_\_ While on parole
- \_\_\_\_\_ While on Work Release or Work Furlough
- \_\_\_\_\_ While serving a sentence for a felony conviction in a county jail or work house
- \_\_\_\_\_ While in a county rehabilitation center

Please check those types of offenders or sentences for which good time allowances cannot be earned.

- \_\_\_\_\_ Those serving life sentences
- \_\_\_\_\_ Those sentenced as habitual offenders
- \_\_\_\_\_ Those convicted of murder in 1st degree
- \_\_\_\_\_ Those convicted of sex offenses
- \_\_\_\_\_ Those convicted of drug offenses
- \_\_\_\_\_ Other (please specify) \_\_\_\_\_

Please check the type (s) of sentencing which is used in your state.

- \_\_\_\_\_ Indeterminate sentence
- \_\_\_\_\_ Fixed or determinate sentence
- \_\_\_\_\_ Both indeterminate and determinate sentence
- \_\_\_\_\_ Other (please specify) \_\_\_\_\_

Please check the methods in which good time allowances are credited to the sentence.

- \_\_\_\_\_ Credited to minimum sentence to advance parole eligibility
- \_\_\_\_\_ Credited to maximum sentence to advance parole eligibility
- \_\_\_\_\_ Credited to maximum sentence to advance the discharge of sentence
- \_\_\_\_\_ Other (please specify) \_\_\_\_\_



Please check the methods by which good time allowances are computed on a sentence.

\_\_\_\_\_ The maximum amount of possible good time allowances on a sentence is credited toward the sentence when the offender is received into the correctional institution and a tentative date is set for parole eligibility or discharge of sentence subject to change in case of loss or denial of good time allowances

\_\_\_\_\_ A fixed amount of good time allowances is credited to a sentence when the offender is received into the correctional institution and a tentative date is set for parole eligibility or discharge of sentence subject to change in case of loss or denial of good time allowances

\_\_\_\_\_ Good time is credited as it is earned by the day; \_\_\_\_\_ week; \_\_\_\_\_ month; \_\_\_\_\_ year

\_\_\_\_\_ Good time allowances are credited to a sentence only when the amount of good time earned would amount to the time needed to be eligible for parole or discharge of sentence

\_\_\_\_\_ Other (please specify) \_\_\_\_\_

For purposes of computing good time allowances,

\_\_\_\_\_ Concurrent sentences are treated as one sentence

\_\_\_\_\_ Two or more consecutive sentences are added together to form one continuous sentence with a maximum and a fixed minimum

\_\_\_\_\_ Two or more consecutive sentences are computed separately

\_\_\_\_\_ A subsequent conviction and sentence for a felony while serving the original sentence acts as a separate sentence

\_\_\_\_\_ Other (please specify) \_\_\_\_\_

Must good time allowances earned during an original sentence be credited toward the new sentence if the original sentence is vacated by an appeal and the offender is retried and receives a new sentence?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If a death sentence is commuted to a sentence of life, what is the date upon which good time allowances may begin to accrue?

\_\_\_\_\_ Not eligible for good time allowances on life sentence

\_\_\_\_\_ From effective date of commutation or \_\_\_\_\_ original sentence

\_\_\_\_\_ Depends on the conditions of the commutation

\_\_\_\_\_ Other (please specify) \_\_\_\_\_

If a death or life sentence is commuted to a sentence of years, what is the date upon which good time allowances may begin to accrue?

\_\_\_\_\_ The effective date of the commutation or \_\_\_\_\_ original sentence

\_\_\_\_\_ Depends on the conditions of the commutation

\_\_\_\_\_ Other (please specify) \_\_\_\_\_

For which of the following reasons may good time allowances be forfeited or denied?

\_\_\_\_\_ Escape or attempted escape

\_\_\_\_\_ Any violation of the institutional rules and regulations

\_\_\_\_\_ Violation of parole; \_\_\_\_\_ conditional release; \_\_\_\_\_ conditional pardon

\_\_\_\_\_ Other (please specify) \_\_\_\_\_

Please check the required procedures in a forfeiture of good time allowances.

- \_\_\_\_\_ A discipline committee holds a hearing concerning the violation
- \_\_\_\_\_ The inmate is given written notice of the charges
- \_\_\_\_\_ The inmate is present at the hearing
- \_\_\_\_\_ The inmate is permitted to have legal counsel at the hearing
- \_\_\_\_\_ The inmate is permitted to have informal or non-legal type advisor at the hearing
- \_\_\_\_\_ The inmate is permitted to call witnesses to the hearing
- \_\_\_\_\_ The inmate is given written notice of the committee's decision
- \_\_\_\_\_ The inmate may appeal the decision of the committee to a higher correctional authority
- \_\_\_\_\_ The inmate may seek legal relief by an appeal to the courts
- \_\_\_\_\_ Other (please specify) \_\_\_\_\_

Please check the methods by which an inmate may regain lost good time allowances.

- \_\_\_\_\_ By maintaining a good record for a definite period of time
- \_\_\_\_\_ At the discretion of the authority for restoring good time allowances
- \_\_\_\_\_ Other (please specify) \_\_\_\_\_

Is a parole violator eligible to regain all lost good time allowances?

\_\_\_\_\_ Yes \_\_\_\_\_ No

Is a parole violator eligible to earn good time on the remainder of his sentence?

\_\_\_\_\_ Yes \_\_\_\_\_ No

-----  
In many states inmates may earn extra good time allowances in addition to the regular allowances.

By which of the following methods may extra or additional good time allowances be earned?

- \_\_\_\_\_ No extra or additional good time allowances may be earned
- \_\_\_\_\_ Participation in volunteer psychological or medical experiments
- \_\_\_\_\_ Blood donations
- \_\_\_\_\_ Meritorious conduct
- \_\_\_\_\_ Other (please specify) \_\_\_\_\_

Please check the types of extra good time allowances which are not subject to loss or denial.

- \_\_\_\_\_ All are subject to loss or denial
  - \_\_\_\_\_ Participation in volunteer psychological or medical experiments
  - \_\_\_\_\_ Blood donation allowances
  - \_\_\_\_\_ Meritorious good time allowances
  - \_\_\_\_\_ Other (please specify) \_\_\_\_\_
-

The following questions are concerned with opinion only.

In your opinion, does the policy of good time allowances aid in maintaining control of the inmates within the institution?

\_\_\_\_\_ Yes \_\_\_\_\_ No

In your opinion, does the policy of good time allowances motivate the inmate to seek out and take part in institutional programs?

\_\_\_\_\_ Yes \_\_\_\_\_ No

In your opinion, the purposes served by the use of good time allowances could be better accomplished by the use of an indeterminate sentence.

\_\_\_\_\_ Yes \_\_\_\_\_ No

-----  
Respondent:

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone No. \_\_\_\_\_

APPENDIX B

GOOD TIME ALLOWANCES FOR STATE DEPARTMENTS OF CORRECTIONS

Appendix B

Good Time Allowances for State Departments of Corrections

I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
Ala.	1843	6mo-1 yr 5days/mo 1-3 yr 6days/mo 3-5 yr 7days/mo 5-10 yr 8days/mo Remaining 10days/mo	Meritorious In- dustrial Pro- duction  Blood Donation	1st yr 3days/mo 2nd, 3rd, 4th yr 4days/mo 5th+yr 5days/mo  30 days/yr	Life Murder 1st	No effect	Credited to maximum sentence to advance discharge
Alas.	1960	6mo-1 yr 5days/mo 1-3 yr 6days/mo 3-5 yr 7days/mo 5-10 yr 8days/mo Remaining 10days/mo	Work camp, meri- torious conduct, extra duties	1st yr 3days/mo 2nd yr 5days/mo 3rd+yr 5days/mo	Life	No effect	Credited to maximum sentence for condi- tional release up to 180 days prior to expiration of sen- tence
Ariz.	1901	1st yr 60days 2nd yr 60days 3rd yr 120days 4th yr 120days 5th yr 150days Remaining 150days/yr	Trusty status	Good time allowances are doubled	All eligible	Credited to minimum sentence for 1st offenders only. Credited to maximum sentence to advance parole eligibility for 2nd offenders or more	No effect
Ark.	1867	Class I 30days/mo Class II 20days/mo Class III 8days/mo Class IV None	None	None	All eligible	Credited to minimum sentence to advance parole eligibility. Credited to maximum sentence to advance parole eligibility	Credited to maximum sentence for discharge

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
Cal.	Repealed 1948	None					
Colo.	1876	1st yr 60days/yr 2nd yr 60days/yr 3rd yr 120days/yr 4th yr 120days/yr 5th yr 150days/yr Remaining 150days/yr	Meritorious service or outstanding service	5 days/mo	Life	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Conn.	1862	1-5 yr 5days/mo 6th yr 7½days/mo Remaining 7½days/mo	Meritorious achievement  Employment for 6 months  Outstanding meritorious performance	5 days/mo  26 days  120 days max.	All eligible	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Del.	1891	1st yr 5days/mo 2nd yr 7days/mo 3rd yr 9days/mo 4th yr 10days/mo Remaining 10days/mo	Participation in rehabilitation programs	5 days/mo	All eligible	Credited to maximum sentence to advance parole eligibility	Credited to maximum sentence to advance conditional release

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
D.C.	1901	1mo-1yr 5days/mo 1-3 yr 6days/mo 3-5 yr 7days/mo 5-10 yr 8days/mo 10th 10days/mo Remaining 10days/mo	Blood Donation  Meritorious conduct, volunteer programs, industrial	30 days/yr  Lump sum or 1st yr 3days/mo 2nd+yr 5days/mo	Life	No effect	Credited to maximum sentence to advance conditional release
Fla.	1871	1st yr 5days/mo 2nd yr 5days/mo 3rd yr 10days/mo 4th yr 10days/mo 5th yr 15days/mo Remaining 15days/mo	Extra gain time  Special gain time  Special gain time	1-6 days/mo  1-15 days/mo  1-60 days flat reduction	All eligible	No effect	Credited to maximum sentence to advance conditional release
Ga.	1856	1st yr 1mo/yr 2nd yr 2mo/yr 3-10 yr 3mo/yr Remaining 4mo/yr	Exemplory conduct	Set by board of corrections	Life	No effect	Credited to minimum sentence to advance conditional release
Ha.		None					
Ida.	1873	6mo-1yr 5days/mo 1-3 yr 6days/mo 3-5 yr 7days/mo 5-10 yr 8days/mo Remaining 10days/mo	Incentive credits  Extra meritorious our outstanding services	Restoration of forfeited good time  1-5 days/mo or Lump sum not to exceed 10 days	Life	Credited to maximum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge

I State	II Law First Passed	III Rate of Good Time Allowances		IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
Ill.	1863	1st yr	1mo/yr	Institutional credits for excellent or special con- duct and par- ticipation in rehabilitation programs	Advance ap- pearance be- fore parole board by 30, 60, or 90 days	All eligible	Credited to minimum sentence to advance parole eligibility. Credited to 1/3 of maximum sentence to advance parole eli- gibility	Credited to maximum sentence to advance conditional release and discharge
		2nd yr	2mo/yr					
		3rd yr	3mo/yr					
		4th yr	4mo/yr					
		5th yr	5mo/yr					
		6th yr	6mo/yr					
		Remaining	6mo/yr					
Ind.	1861	1st yr	1mo/yr	None		Life Habitual Murder 1st	Credited to minimum sentence to advance parole eligibility for indeterminate sentence only	Credited to maximum sentence to advance discharge
		2nd yr	2mo/yr					
		3rd yr	3mo/yr					
		4th yr	4mo/yr					
		5th yr	5mo/yr					
		Remaining	5mo/yr					
Iowa	1878	1st yr	1mo/yr	Trusty, honor time	10 days/mo	Life	No effect	Credited to maximum sentence to advance discharge
		2nd yr	2mo yr					
		3rd yr	3mo/yr					
		4th yr	4mo/yr					
		5th yr	5mo/yr					
		Remaining	6mo/yr					
Kan.	1867	1st yr	60days/yr	Incentive credit	2½ days/mo	All eligible	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance conditional release and discharge
		2nd yr	120days/yr					
		3rd yr	180days/yr					
		Remaining	180days/yr					

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I State	II Law First Passed	III Rate of Good Time Allowances		IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
Ky.	1876	1-10	days/mo	None		Life	No effect	Credited to maximum sentence to advance discharge
La.	1842	25 days/mo	flat	None		Life	No effect	Credited to maximum sentence to advance discharge
Me.	1858	7 days/mo	flat	Meritorious conduct, special job assignment	2 days/mo	All eligible	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Md.	1916	5 days/mo	flat	Special duties vocational and/ or educational participation	5 days/mo	All eligible	Credited on life sentence to ad- vance parole eligibility	Credited to maximum sentence to advance conditional release
Mass.	1857	4mo-1 yr	2½days/mo	Prison camp Blood Donation	2½ days/mo 5 days	Life Murder 1st Sex Offender Offenders convicted for 2nd offense while con- fined	Additional good time allowances only credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
		1-2 yr	5days/mo					
		2-3 yr	7½days/mo					
		3-4 yr	10days/mo					
		Remaining	12½days/mo					

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
Mich.	1857	1-2 yr 5days/mo 3-4 yr 6days/mo 5-6 yr 7days/mo 7-9 yr 9days/mo 10-14 yr 10days/mo 15-19 yr 12days/mo Remaining 15days/mo	Trusty, meritorious conduct	1/4 regular good time allowances	Life for Murder 1st Degree	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Minn.	1867	1mo-1 yr 5days/mo 1-2 yr 7days/mo 2-3 yr 9days/mo Remaining 10days/mo	None		Life	Credited to maximum sentence to advance parole eligibility	Credited to maximum sentence to advance conditional release and discharge
Miss.	1892	1st yr 3days/mo 2nd yr 4days/mo 3rd yr 5days/mo 4th yr 6days/mo 5th yr 7days/mo 6th yr 8days/mo 7th yr 9days/mo 8th yr 10days/mo 9th yr 11days/mo 10th yr 15days/mo Remaining 15days/mo	Extra meritorious conduct Overtime or Sunday work Blood Donation	Increase allowances Equivalent allowances 10 days	All eligible	No effect	Credited to maximum sentence to advance discharge

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
Mo.	1879	Maximum sentence reduced by 1/4 by parole board	Incentive time, meritorious service	5 days/mo to 10days/mo	Life	No effect	Credited to maximum sentence to advance discharge
Mont.	1877	10 days/mo inside walls 13 days/mo outside walls 15 days/mo outside walls trustee	Blood Donation Meritorious conduct, school attendance, rehabilitation programs	10 days 13 days/mo	All eligible	Credited to maximum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Nebr.	1873	1st yr 2mo 2nd yr 2mo 3rd yr 3mo 4th yr 4mo Remaining 4mo/yr	Meritorious conduct or exceptional performance Parole	1-5days/mo 6 days/mo	Life	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance mandatory release. Credited to parole time to advance mandatory discharge
N.H.	1867	90 days/yr flat	Blood Donation, Meritorious conduct	5 days	All eligible	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Nevada	1887	1-2 yr 2mo/yr 3-4 yr 4mo/yr 5th yr 5mo/yr Remaining 5mo/yr	Blood Donation, Program and work participation	Determined by state board of parole committee	All eligible	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
N.J.	1868	1st yr 7days/mo 2-6 yr 8days/mo 7-11 yr 10days/mo 12-16 yr 11days/mo 17-21 yr 12days/mo 22-24 yr 13days/mo 25-29 yr 15days/mo Remaining 16days/mo	Productive occupation  Honor camp, farm camp	5 days work/1 day  1st yr 3days/mo 2nd yr 5days/mo 3rd+yr 5days/mo	Sex Offender	Credited to maximum and minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
N.M.	1889	1st yr 1mo/yr 2nd yr 2mo/yr 3rd yr 3mo/yr 4th yr 4mo/yr 5th yr 5mo/yr 6th yr 6mo/yr Remaining 6mo/yr	Meritorious service and conduct  Honor farm  Blood Donation  Exceptional meritorious service or conduct  Industrial work	10 days/mo  12 days/mo  10 days  Lump sum not to exceed one year  10 days/mo	Life	No effect	Credited to maximum sentence to advance discharge
N.Y.	1817	Rate determined by good time allowance committee not to exceed 1/3 of the maximum on an indeterminate sentence	Meritorious conduct, extra work	Rate determined by commissioner of corrections	Life	No effect	Credited to maximum sentence to advance conditional release

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
N.C.	1874	Rate determined by commissioner of corrections	Meritorious conduct, extra work	Rate determined by commissioner of corrections	Life	No effect	Credited to maximum sentence to advance discharge and to minimum sentence to advance conditional release or discharge
N.Dak.	1881	1-2 yr 60days/yr 3-4 yr 75days/yr 5-6 yr 90days/yr 7-10 yr 105days/yr Remaining 120days/yr	Meritorious conduct  Good work record and conduct  Sunday or holiday work	60days/yr  16 2/3 of time served  30 hrs work/1day	Life	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Ohio	1856	1st yr 5days/mo 2nd yr 6days/mo 3rd yr 8days/mo 4th yr 9days/mo 5th yr 10days/mo 6th yr 11days/mo Remaining 11days/mo	None	None	Life Habitual Murder 1st	Credited to minimum sentence to advance parole eligibility	No effect
Okla.	1905	1-2 yr 2mo/yr 3-4 yr 4mo/yr Remaining 5mo/yr	Work  Blood Donation	6 days work/2days  20 days	All eligible	No effect	Credited to maximum sentence to advance discharge

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
Ore.	1864	6mo-1yr 5days/mo Remaining 15days/mo	Meritorious conduct and work in industry  Agriculture and work camp	1st yr 15 days work/1 day 2-5 yr 7 days work/1 day Remaining 6 days work/1 day  1st yr 10 days work/1 day Remaining 6 days work/1 day	Life	No effect	Credited to maximum sentence to advance discharge
Penn.	Repealed 1965	None					
R.I.	1877	1st yr .1day/mo 2nd yr 2days/mo 3rd yr 3days/mo 4th yr 4days/mo Remaining 5days/mo	Blood Donation Work in industry	10 days 2 days/mo	Life	Time for blood donations only credited to parole eligibility	Credited to maximum sentence to advance discharge
S.C.	1914	15 days/mo flat	Extra work Meritorious service	1 day/week 60 days/yr	Life Indeterminate Sentence	No effect	Credited to maximum sentence to advance discharge

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
S.Dak.	1881	1-2 yr 2mo/yr 3rd yr 3mo/yr 4-10 yr 4mo/yr Remaining 6mo/yr	None	None	Life	Credited to minimum of indeterminate sentence and maximum of determinate sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Tenn.	1836	1st yr 1mo/yr 2nd yr 2mo/yr 3-10 yr 3mo/yr Remaining 4mo/yr	Honor time	2 mo/yr	All eligible	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Texas	1881	Class I 20days/mo Class II 10days/mo Class III None	Trusty Blood Donation	30 days/mo 30 days	All eligible	Credited to maximum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Utah	Rescinded 1957						
Vt.	1867	5 days/mo flat	Meritorious work conduct, special services	5 days/mo	All eligible	Credited to minimum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
Va.	1886	10 days for every 20 days served	Vocational or educational training  Blood Donations and extraordinary services	1 day/mo  Lump sum to be determined by state board of parole	Life	Only allowance for blood donations and extraordinary services are credited to advance parole eligibility	Credited to maximum sentence to advance discharge
Wash.	1888	Good time credits fixed by Board of Prison Terms and Paroles not to exceed 1/3 of sentence	Parole Board may reduce minimum		Criminally Insane Sexual Psychopath	Credited to minimum sentence to advance parole eligibility	No effect
W.Va.	1868	1 yr 5days/mo 1-3 yrs 6days/mo 3-5 yrs 7days/mo 5-10 yrs 8days/mo Remaining 10days/mo	Meritorious conduct	9 1/2 days/mo	Life	No effect	Credited to maximum sentence to advance discharge
Wisc.	1860	1st yr/1mm 2nd yr/2mo 3rd yr/3mo 4th yr/4mo 5th yr/5mo Remaining 6mo/yr	Diligent labor and/or study	5 days/mo	Life	No effect	Credited to maximum sentence to advance mandatory conditional release

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I State	II Law First Passed	III Rate of Good Time Allowances	IV Types of Additional Good Time Allowances	V Rate of Additional Good Time Allowances	VI Offender Ineligible for Good Time	VII Effect on Parole Eligibility	VIII Effect on Discharge and/or Release
Wyo.	1893	30 days/yr flat	Special good time	Determined by Parole Board	Life	Credited to maximum sentence to advance parole eligibility	Credited to maximum sentence to advance discharge
Guam		Unknown	None	None	All eligible	Credited to maximum sentence to advance parole eligibility	No effect
Federal	1867	6mo-1yr 5days/mo 1-3 yrs 6days/mo 3-5 yrs 7days/mo 5-10 yrs 8days/mo Remaining 10days/mo	Camp good time, Work release good time, Community Treatment Center good time, Industrial good time, Meritorious good time, special award good time, Good time earned at other state institutions: military, state, D.C.	1st yr 3days/mo 2nd and Remaining 5days/mo	All eligible	No effect	Credited to maximum sentence to advance conditional release

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APPENDIX C

GOOD TIME ATTITUDE QUESTIONNAIRE

Appendix C

Good Time Attitude Questionnaire

In your opinion, the statute allowing for inmates in the Texas Department of Corrections to earn good time allowances:

- Yes  No should be changed to reduce the amount of good time allowances an inmate may earn
- Yes  No is adequate and does not need to be changed
- Yes  No should be changed to increase the amount of good time allowances an inmate may earn
- Yes  No should be changed to restrict the eligibility to earn good time allowances for certain types of offenders and sentences
- Yes  No should be changed so that good time allowances are credited toward the maximum sentence for discharge only and not for advancing the parole eligibility
- Yes  No should be eliminated in favor of a more liberal parole policy
- Yes  No should be repealed
- Yes  No other (please specify) \_\_\_\_\_

Please check the following type of offenders and type of sentences which should not be eligible to earn good time allowances.

- All types of offenders should be eligible for good time allowances
- Those sentenced as habitual offenders
- All recidivists
- Convicted sex offenders
- Convicted drug offenders
- Those convicted of murder in the 1st degree

- Those serving life sentences
- Those convicted of crimes of violence
- Other (please specify)

In your opinion, does the policy of good time allowances aid in maintaining control over the inmates within the institution?

Yes  No

In your opinion, does the policy of good time allowances motivate the inmate to seek out and take part in institutional programs?

Yes  No

In your opinion, before an inmate loses his good time

- a discipline committee should hold a hearing
- the inmate should be given a written notice of the charges
- the inmate should be permitted to attend the hearing if requested
- the inmate should be permitted to call witnesses on his behalf at the hearing
- the inmate should be permitted to cross examine the witness
- the inmate should be permitted to have legal counsel if requested
- the inmate should be permitted to have an informal advisor or non-legal counsel
- a written notice of the committee's decision should be given to the inmate

- the inmate should be permitted to appeal the committee's decision to a higher authority if requested
- the inmate should be permitted to appeal the committee's decision to the courts

In your opinion, the purposes served by the use of good time allowances could be better accomplished by the use of an indeterminate sentence.

Yes  No

In your opinion, does the sentencing authority, judge, take into consideration the good time allowances an offender may earn when passing sentence?

Yes  No

This results in:

an increase in sentence;  a decrease in sentence

Should an offender earn good time in jail prior to incarceration in the state correctional institution?

Yes  No

Should an offender earn good time on parole?

Yes  No

APPENDIX D

100 LARGEST COUNTIES IN TEXAS

Appendix D  
100 Largest Counties in Texas

Anderson	Castro	El Paso	Harris	Montgomery
Andrews	Chambers	Erath	Harrison	Nacogdoches
Angelina	Cherokee	Falls	Hays	Navarro
Atascosa	Coleman	Fannin	Henderson	Nueces
Austin	Collin	Fayette	Hidalgo	Orange
Bailey	Colorado	Floyd	Howard	Potter
Bastrop	Comal	Fort Bend	Hunt	Randall
Bee	Comanche	Freestone	Hutchinson	Rusk
Bell	Cooke	Frio	Jasper	San Patricio
Bexar	Coryell	Gaines	Jefferson	Smith
Bosque	Crosby	Galveston	Jim Wells	Tarrant
Bowie	Dallas	Gillespie	Johnson	Taylor
Brazoria	Dawson	Gonzales	Kaufman	Tom Green
Brazos	Deaf Smith	Gray	Kleberg	Travis
Brown	Denton	Grayson	Lamar	Val Verde
Burleson	DeWitt	Gregg	Liberty	Victoria
Caldwell	Duval	Grimes	Lubbock	Wharton
Calhoun	Eastland	Guadalupe	McLennan	Walker
Cameron	Ector	Hale	Matagorda	Webb
Cass	Ellis	Hardin	Midland	Wichita