STAFF ANALYSIS OF
"GOOD TIME" IN LOUISIANA

Governor's Pardon, Parole and
Rehabilitation Commission

March 22, 1978

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CHAPTER I

ORIGINS, THEORY AND EVOLUTION OF GOOD TIME

"Good time laws" is the designation given to provisions in force in virtually every American state authorizing a reduction of sentence for prisoners whose institutional conduct meets some established standard.[1] The amount of reduction, the standards and procedure for awarding reductions, eligibility, and causes for and amount of forfeiture vary widely from one jurisdiction to the next, but the essential feature of every system is credit off of sentence for certain behavior.

The concept of good time can be traced to the eighteenth century thinker Vilain, who has been called "the father of modern penitentiary science."[2] He argued that prison authorities should have the power to recommend inmates for pardon as a reward for good conduct, rather than only to detain inmates after expiration of their sentences as a penalty for misconduct.

The first American good-time law was enacted in New York in 1817, providing that first-term prisoners with sentences of five years or less could have their sentences shortened by one-fourth. However, this provision apparently was never used.[3] Nine other states[4] adopted good-time laws before the Civil War, but mass acceptance of the concept did not come until after the war.

As with parole release, which evolved from earlier forms of conditional release into an integrated system tied to the indeterminate sentence,[5] the impetus for widespread adoption of good-time laws was the acceptance in the late 19th century of the philosophy of the Reformatory movement.

That philosophy held that the primary purpose of a sentence was reformation of the offender, which could not be predicted at the time of sentence. Thus, the sentence had to be indeterminate to permit discretion by correctional authorities to release inmates at a future time when they have shown by their good conduct or participation in self-improvement programs that they have been "reformed" or "rehabilitated."[6] Thus, in theory at least, the cornerstone of good time is the proposition that manipulating credit on sentences to reward good behavior, good work habits and participation in correctional programs and to penalize the opposite conduct will both encourage rehabilitation and hasten the release of those inmates who have been rehabilitated. As stated by the Attorney General's Report on Release Procedures in 1939:

> A long sentence, subject to reduction to a shorter term if the convict behaves himself, is in line with modern tendencies toward individualization of treatment. It is part of the same philosophy which also lies behind the indeterminate sentence and parole./7/

A second even more obvious purpose of good-time laws is to maintain prison discipline. Many authorities view extension of an inmate's sentence as the most severe punishment for misbehavior, and therefore the greatest deterrent to institutional misconduct.[8] Indeed, although good time was historically designed as a positive incentive to reward desirable behavior, in practice today it is used principally as an "aversive control procedure"[9] to punish misbehavior.[10] In fact, a major criticism directed toward the procedure is that its primary use as an institutional control mechanism perverts its original purpose.[11]

Still, institutional authorities generally maintain that good time is essential if they are to perform their primary duty of keeping order behind prison walls.

A third purpose of good time is explained by the Attorney General's Report:

> An important purpose of good-time laws is that of mitigating the severity of the sentence. Criminal penalties in this country are markedly higher than in many of the countries of Europe. This is not as serious an indictment as it may seem, when we take into account the operation of the good-time laws. On the other hand, the fact that our prison sentences are severe should be borne in mind by members of the public who may be inclined to look upon good-time laws as a "loophole" by which prisoners are relieved from part of their "just deserts." It is more correct to consider these provisions as an inevitable corollary of our high sentences./12/

At present, all states have a good-time system, except for Arizona, Illinois, Indiana, Missouri, Pennsylvania and Utah. Of these, only Pennsylvania had no good-time law before 1970, while the other states listed have repealed their good-time statutes since then. However, during that same period, New Hampshire, Idaho, and Kansas, which did not previously have good-time statutes, enacted such provisions. Thus, there appears to be no discernable trend toward or away from good time, and it remains an important component of the sentencing and penal regimes in the vast majority of American jurisdictions.

Good-time laws may hasten the time of final, absolute release or they may shorten the period an inmate must wait before he is eligible for parole. The latter type of good-time provision is actually an adjunct to the parole system rather than a separate type of release procedure.[13] Only fourteen states allow good-time credit to advance the

parole eligibility date as well as final discharge.[14] A variation on this scheme is the system used in seven states--Alaska, Delaware, Florida, Hawaii, Maryland, Texas, and Wisconsin--under which persons released on good time are placed on supervision like parolees for the remainder of their full sentences.

A second set of categories that may be applied to good-time practices is related to the dichotomy discussed earlier of using good time to reward an absence of bad behavior (including not violating rules and performing work or other duties delegated to inmates) or to encourage affirmative steps toward rehabilitation. "Statutory" or "regular" good time usually performs the former function, while "extra" or "special" good time is intended to accomplish the latter.[15] Nearly twice as many states allow awarding of both statutory and special good time as allow only statutory good time.[16]

Somewhat related to the distinction between statutory and special good time are the different procedures used to compute good time, two of which are most common. The first method for crediting good time is to award it "automatically" at the beginning of the inmate's sentence and take it away periodically if the inmate misbehaves. The second way good time is computed is to award it periodically only upon good behavior or upon some positive performance by the inmate.[17] This second method is often referred to as "contingent." While statutory good time may be computed by either method, if special good time is administered as it should be, the automatic method of computation is inherently incompatible with it. This is so because, by its nature, special good time must be awarded only after it has been earned. Thus,

states that award both special and statutory good time sometimes compute statutory good time automatically but use the contingent method to award special good time.

It is difficult to tell merely by reading most good-time statutes which of the two methods of computation is contemplated. Moreover, the statutes are even less instructive as to which method is used in practice in each state. However, it appears to be generally true that statutory good time is figured automatically while special good time is computed contingently.

The basis for awarding and the amount of good time varies greatly from one state to another. Some states authorize earning good time on a graduated basis, according to the length of sentence imposed upon the inmate.[18] For instance, in Alabama (in addition to special good time) a prisoner serving a one- to three-year sentence earns ten days of good time each month; one serving three to five years may be credited with eleven days per month; one serving five to ten years may be credited with thirteen days per month; and an inmate serving over ten years may earn fifteen days per month.[19]

Another variation on graduated rates of credit is one followed in some states which allow good time according to the length of time inmates have been incarcerated.[20] For instance, the following plan operates in Florida: in addition to special good time, inmates may earn five days per month during their first and second years, ten days per month during their third and fourth years and fifteen days per month during each subsequent year.[21]

The three states bordering Louisiana--Texas, Mississippi and

Arkansas--are the only jurisdictions in the nation with a third type of graduated good time based on a grading of inmates by institutional authorities. Arkansas and Mississippi allow thirty days for every thirty days served to Class I inmates, twenty days for every thirty days served to Class II inmates, eight days for each thirty days served to Class III inmates and no credit to Class IV inmates. Texas provides for credit at the ratio of twenty to thirty days for Class I, ten to thirty for Class II, ten days additional for each thirty days if the inmate is a trustee, and no credit to Class III inmates. The Mississippi and Arkansas statutes leave to institutional authorities a good deal of discretion in classifying inmates. It is prescribed in the Mississippi statute that all inmates must begin in the lowest class and remain there for at least thirty days. Promotions are only to the next highest class as prisoners move up the good-time ladder. The Texas system provides for classification according to "conduct, obedience, industry and prior criminal history," and automatic accrual of "good conduct time" according to the class the offender is placed in.[22] The final scheme of good time allows crediting of a flat amount of diminution in sentence throughout the inmate's sentence, and it is applied equally to all inmates. For example, Kentucky allows deduction of ten days' statutory good time and five days' special good time per month to all prisoners.[23] The average good time allowed by states with such flat awarding systems is about fifteen days per month or one-third off inmates' sentences.

A few states establish eligibility limitations on good time or decrease the amount of good time inmates convicted of certain crimes

may earn. This practice is relatively uncommon and occurs much less often than do restrictions on parole eligibility. Mississippi does not allow inmates with mandatory sentences to earn good time during the first three years of imprisonment. Under the Georgia statute, habitual offenders earn good time at a lower rate than other inmates. Sourth Dakota prisoners with sentences of two years or more must have the recommendation of the Board of Pardons and Paroles to earn special good time. Finally, Massachusetts excludes inmates convicted of certain crimes from earning good time.

The states also vary in their determination of when and how much accumulated good time may be forfeited for misconduct. A number of states make no provision for forfeiture, and so presumably only refuse to award good time for a particular period on account of misconduct.[24] Other states provide specifically that, except for unusually serious violations or escape, only the amount of good time that otherwise would have been earned during the particular month is lost.[25] Iowa and Wisconsin provide for loss of a set amount of good time, depending on how many rule violations the inmate has committed; for instance, five days for the first offense, ten days for the second offense and twenty days for the third and subsequent offenses.

The most common provision regarding forfeiture is the one incorporated in the statutes of 21 states allowing forfeiture of all or part of previously earned good time for rule violations.[26] Arkansas, Mississippi and Virginia require forfeiture of all earned good time when the inmate escapes, while Florida mandates full forfeiture for escape or parole revocation.

The final matter to be discussed regarding good-time laws is restoration of forfeited credit. In almost all states, it is either expressly provided or impliedly presumed that good time forfeited may later be restored.[27] There are only three states which allow forfeiture of accumulated good time but prohibit restoration at a later date. They are Kentucky, Wisconsin and Iowa (for the fifth or subsequent prison violation). Thus, while great discretion is typically vested in institutional authorities to deprive inmates of good time, such authorities are also free to return it to them.

DUE PROCESS AND DISCIPLINARY PROCEDURES

Before the case of Wolff v. McDonnell[28] was decided by the United States Supreme Court in 1974, the courts had been extremely reluctant to involve themselves with decisions made by correctional authorities in the administration of institutions. The fear that judicial tampering with the complex interrelationships within a prison might upset the delicate balance of institutional control was certainly an important consideration in adopting this "hands-off" attitude.

However, with Wolff, the Court recognized that

> . . .though his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country./29/
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> In sum, there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application./30/

The Court went on to state that although there is no Constitutional right to good-time credit for satisfactory behavior while in prison, if the state provides such a scheme, specifying that credit is to be forfeited only for serious misbehavior

> . . .the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment "liberty" to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated./31/

The Court held that the following procedures are required by due process before an inmate's good time may be denied him (or other serious disciplinary action taken):

1. There must be advance written notice of the claimed violation and a written statement of the factfindings as to the evidence relied upon and the reasons for the disciplinary action taken.

2. The inmate must be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safetyand correctional goals.

3. While there is no right to retained or appointed counsel, when an illiterate inmate is involved or where the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he may seek the aid of a fellow inmate or have adequate substitute aid from the staff or from a sufficiently competent inmate designated by the staff.

The Court also noted that these particular procedural requirements are "not graven in stone" and recognized the possibility that as "the nature of the prison disciplinary process changes in future years, circumstances may then exist which will require further consideration and reflection by this Court," resulting in the imposition of greater procedural regularity. For the present, however, the above procedures are the only ones that must be followed to meet Constitutional muster in disciplinary matters.

CHAPTER II

GOOD TIME IN LOUISIANA

Louisiana was the fourth state to adopt a good-time law at the early date of 1842.[1] Today, two entirely different good-time regimes are applicable to inmates in the custody of the Department of Corrections and those who are parish prisoners under the jurisdiction of the sheriff. Broadly speaking, inmates in parish jails are those who have been sentenced for committing misdemeanors or relative felonies[2] when the judge has opted to sentence such felons to imprisonment without hard labor. Inmates in the custody of the Department of Corrections are those sentenced to imprisonment for felonies or for relative felonies where the judge has elected to sentence to imprisonment at hard labor. But, there are inmates in parish jails who do not fall neatly into the categories described above:

1. Persons charged with any crime against the state who have not bonded out pending trial.

2. Persons convicted of a crime for which a sentence to imprisonment at hard labor has been imposed who have not bonded out pending appeal.

3. Persons sentenced to hard labor in the custody of the Department of Corrections who are kept in parish jails because there is no room for them at present in state institutions.

Persons in the first category do not receive credit for good time. The period spent in jail awaiting trial is subtracted from their sentences so that inmates do not have to serve that time twice, but they do not get any extra credit for good behavior during that period. Those in the second category are governed by the good-time laws applicable to inmates in the custody of the Department of Corrections. This is required by

the decision of the Fifth Circuit Court of Appeal in Pruett v. Texas,[3] which was affirmed by the United States Supreme Court by memorandum decision.[4] Finally, those inmates in the third category are awarded good time under the laws applicable to inmates in the custody of the Department of Corrections.

GOOD TIME FOR INMATES IN DEPARTMENT OF CORRECTIONS CUSTODY--
THE LEGAL FRAMEWORK

The statutory provisions governing good time both for parish jail inmates and prisoners in the custody of the Department of Corrections are Louisiana Revised Statutes 15:571.3 and 571.4.

Nature of Good Time and Means of Computation

La.R.S. 15:571.3(B) provides in pertinent part that eligible inmates "may earn a diminution of sentence by good behavior and performance of work or self-improvement activities or both to be known as 'good time'. . . . The director of corrections shall establish procedures for awarding and recording of good time and shall determine when good time has been earned toward diminution of sentence." La.R.S. 15:571.4(B) further provides

> Upon the recommendation of the warden or superintendent of the adult correctional institutions of the Department of Corrections, the director of corrections may authorize the awarding of good time in the amount prescribed by law toward the diminution of sentence for inmates in the custody of the department of corrections. Recommendations for good time credit will be made on the basis of a thorough evaluation of the individual inmate's behavior, work performance and efforts toward self-improvement. Determination will be made on a monthly basis as to whether good time has been earned.

Thus, it is apparent that Louisiana law has combined the classic statutory and special good-time schemes to give inmates credit on their sentences not only for good behavior and proper performance of work duties but also for participation in institutional programs and otherwise exhibiting affirmative efforts at rehabilitation. Although there is no "special" good time in Louisiana in the sense of a separate mechanism by which inmates can earn additional time off their sentences,

the statutes do provide authority, if administrators so desire, to award more good time for those inmates who both obey the rules and also perform unusual undertakings.

The method of computation provided for is contingent rather than automatic in that good time is to be awarded monthly after evaluating the inmate's performance since the last evaluation. Good time is credited only against the judicially imposed sentence and does not operate in Louisiana to hasten parole eligibility.

Eligibility

An inmate is eligible if he is "in the custody of the Department of Corrections," and has been "convicted of a felony and sentenced to imprisonment for a stated number of years or months. . . ."[5] La.R.S. 571.3(B) further provides: "Those inmates serving life sentences will be credited with good time earned which will be applied toward diminution of their sentences at such time as their life sentences might be commuted to a specific number of years."

Certain offenders with a set sentence or whose sentences have been commuted to a particular number of years may nonetheless be excluded from eligibility to earn good time. Inmates convicted at least once of first- or second-degree murder; manslaughter; aggravated battery; aggravated, forcible or simple rape; aggravated kidnapping; aggravated or simple burglary; armed or simple robbery; felony theft; illegal carrying of weapons or possession of a firearm when the crime is a felony; a felony violation of the Louisiana Uniform Controlled Dangerous Substances Law, or any attempt to commit any of the above crimes when the attempt is a felony, and who have been sentenced under the Habitual

Offender Law prior to or on September 9, 1977, may be precluded from receiving good time if the sentencing judge so orders. Any such offender sentenced after September 9, 1977, is not eligible to receive good time credit, regardless of the action of the sentencing judge. The difference in treatment accorded to offenders depending on the date of sentencing is the result of the non-retroactive provisions of Act 633 of the 1977 regular session making disqualification of habitual offenders mandatory.

Amount of Deduction

Louisiana does not have a graded system of good-time credit but provides for awarding a flat amount of sentence deduction per month by the secretary of the Department of Corrections upon recommendation of the warden. All offenders sentenced before September 9, 1977, may receive good time at the rate of twenty-five days per month. Those sentenced after that date may receive only fifteen days per month under Act 665 of the 1977 regular session.

Forfeiture and Restoration

With some exceptions, good time may not be forfeited by state prisoners once it has been awarded. La.R.S. 15:571.4(B) states:

> Forfeiture of good time shall not exceed twenty-five days for any one month of time served. Good time which has been earned will not be forfeited except that an inmate who escapes from custody will forfeit all good time earned on that portion of the sentence served prior to escape. An offender who is returned to an institution due to revocation of parole will forfeit all good time earned on that portion of the sentence served prior to parole up to a maximum of one hundred and eighty days.

"Forfeiture" as used in the first sentence quoted above apparently means the failure to earn good time during any particular month. Thus, regardless

of an inmate's behavior, he can only be deprived of good time for the month in question and not of any credit previously earned. As indicated in the remainder of the quoted statute, true forfeiture, in the sense of loss of credit that has already vested, only occurs upon escape or parole revocation.

There is no provision for restoration of good time forfeited by escape or parole revocation. Moreover, good time that is not awarded "during a particular month cannot be credited at a later time."[6] Thus, while inmates cannot lose more than fifteen (or twenty-five) days' credit in a month, they also may not earn more than that amount in any month or have any forfeited or unearned credit restored.

GOOD TIME FOR INMATES IN DEPARTMENT OF CORRECTIONS CUSTODY--
HOW IT WORKS IN PRACTICE

The actual functioning of good time in Louisiana does not fully comply with the process envisioned by the statutes. The legal framework provides for a monthly evaluation of behavior, work performance and efforts at self-improvement and the contingent awarding of up to fifteen (or twenty-five) days' credit on the basis thereof; in practice, inmates are automatically awarded fifteen (or twenty-five) days for each month of their sentence when they enter the institution, and up to fifteen (or twenty-five) days credit may be taken away from them during incarceration for each month during which they commit certain serious offenses within the institution. Thus, while Louisiana law contemplates a combined statutory and special good-time scheme computed contingently, the system is actually purely statutory and operates on an automatic basis. As each month of the inmate's term passes for which good time has not been taken away, the full amount allowed for the month vests in the inmate and cannot be forfeited except for escape or parole revocation. No more than the amount allowed for each month may be taken from the inmate, and credit lost in any particular month cannot be credited later.

Although the statutes seem to require that the Secretary of Corrections, upon recommendation of the warden of the institution, order that good time credit be awarded each month, the practice is that credit is denied only upon order of the Disciplinary Board in the institution, subject to review (by appeal) of the warden and the Secretary of Corrections. To gain a more complete understanding of good time as it operates

as a control mechanism in state institutions, it is helpful to place it in the context of the disciplinary rules and procedures in force there.

Disciplinary Rules and Procedures

The procedures to be followed in punishing an inmate for breaches of prison discipline and the penalties that may be imposed therefor depend upon the seriousness of the offense. When a security employee wishes to report that an inmate has committed a minor violation of the disciplinary rules, he must write up a Disciplinary Report, which includes a statement of the alleged conduct and the rule that has been broken. Usually within one week, a hearing is held before a Disciplinary Officer (a ranking security officer, at least Classification Officer IV), at which the accused represents himself and is given a full opportunity to speak in his own behalf. No further formalities are required at such hearings, and they are not taped or transcribed.

If the Disciplinary Officer finds the inmate guilty he may impose one or two of the following penalties:

1. Reprimand
2. Extra duty - up to four (4) days for each violation
3. Loss of Minor Privileges for up to two (2) weeks

Extra Duty is defined as work to be performed in addition to the regular job assignment, as specified by the proper authority. One (1) day of Extra Duty is eight (8) hours long.

Minor Privileges are:
a. Radio and/or Television
b. Recreation and/or Yard activities
c. Telephone (except for emergencies)
d. Movies

e. Up to twelve (12) hours reduction of weekend pass or Christmas or Easter furlough

f. Any other similar privilege

A prisoner who wishes to appeal a case heard by the Disciplinary Officer may appeal to the Disciplinary Board (whose composition is described below). The inmate must make known his intention to the Disciplinary Officer, who then automatically suspends the sentence and schedules the case for the next meeting of the Disciplinary Board.

When the offense charged is a serious one, the hearing must be held before the Disciplinary Board. Prisoners accused of serious misconduct who present an immediate threat to the security of the facility are placed in Administrative Lockdown. Prisoners in Administrative Lockdown must be heard by the Disciplinary Board within 72 hours. When it is impossible to provide a full hearing within 72 hours, the accused must be brought before the Board and informed of the reasons for the delay.

The Disciplinary Board is a committee composed of at least three supervisory level employees, one each from the Security, Treatment and Administration components of the institution. The chairman of the Board must be a Warden, Associate or Deputy Warden or Division Head.

The accused prisoner must be given a written copy of the charges against him--usually a copy of the Disciplinary Report--at least 24 hours before the hearing begins and, at the same time, he is informed of his rights during the hearing. The inmate may present relevant-non-repetitious evidence and witnesses in his behalf and have a retained

attorney or counsel substitute (usually another inmate) present. He is afforded the right against self-incrimination and may remain silent during the hearing. The inmate may confront and cross examine his accuser, unless the accuser is a confidential informant, and he is furnished with an oral summary of the evidence and the reasons for the judgment. The prisoner also has a right to a written summary of the evidence and the reasons for judgment if he pleaded not guilty. Hearings before the Board are tape-recorded in their entirety and preserved for at least 30 days. The inmate may request a re-hearing, which the Disciplinary Board may grant in its own discretion. Finally, the inmate may appeal to the warden (in some institutions) and then to the Secretary of Corrections. In practice, the decision of the Disciplinary Board is rarely overturned.

The permissible penalties depend upon the seriousness of the offense charged. There are two penalty schedules for offenses charged by Disciplinary Report and heard by the Disciplinary Board. The offenses that may be punished under Schedule A are attempted possession of contraband, attempted crime against nature, disobedience, disorderly conduct, disrespect towards an employee of the institution, fighting, gambling, misuse of state vehicles or machinery, radio and television abuse, attempted theft, being in an unauthorized area, possessing unauthorized food and unsanitary practices. When the Disciplinary Board finds an inmate guilty of any of these offenses, it may impose one or two of the following Schedule A penalties:

1. Reprimand
2. Loss of Minor Privileges for up to two (2) weeks[7]

3. Extra Duty - up to four (4) days for each violation[8]
4. Isolation - up to five (5) days for each violation
5. Loss of Good Time - up to ten (10) days for each violation
6. Quarters Change
7. Job Change, if the violation involves the job

The following offenses may be punished by the penalties listed in Schedule B: possession of contraband, crime against nature, defiance of an institution employee, aggravated disobedience, escape, bribing, influencing or coercing another to show favoritism toward an inmate by violating institutional rules or state or federal law, aggravated fighting, intoxication, property distruction, self-mutilation, and theft. Under Schedule B, one or two of the following penalties may be imposed:

1. Reprimand
2. Loss of Minor Privileges for up to four (4) weeks
3. Extra Duty - up to eight (8) days for each violation
4. Loss of Major Privileges
5. Isolation - up to ten (10) days for each violation OR Transfer to Maximum Security
6. Recommendation of Transfer to Another Facility
7. Loss of Good Time - up to twenty-five (25) days for the month in which the violation occurs
8. Quarters Change
9. Job Change

Extra Duty is defined on Page II-8.

Minor Privileges are defined on Page II-8.

Major Privileges are:

a. Loss of weekend passes for up to three (3) months

b. Confinement to room or cell for up to one (1) month

c. Visiting, if the violating involves visiting

d. Loss of Christmas or Easter furlough

e. Any other similar privilege

Thus, good time may be lost for commission of a major infraction, and the amount that may be lost depends upon the seriousness of the offense. It should be noted that although the Department of Corrections Disciplinary Procedures allow for forfeiture of 10 days per incident for Schedule A offenses and up to 25 days' good time for Schedule B offenses, those inmates only earning 15 days per month cannot lose any more than that amount during any one month.

The Disciplinary Board is authorized to suspend any sentence it imposes for a period up to 90 days. A prisoner who maintains a report-free conduct record during the period of suspension will not be subjected to the penalty and will have the report and its summary removed from his record. No inmate may be confined in isolation for longer than 10 consecutive days or for more than 20 days during any calendar month.[9]

Although loss of good time is a permissible sanction for all serious infractions, in practice it is used only in extreme cases and usually as a matter of last resort. Good time is generally withheld only for escape, aggravated fighting, serious cases of possession of contraband and for repeated disciplinary violations constituting a pattern of misconduct by a particular inmate. In most cases, when good time is taken, it is

usually in conjunction with another punishment, such as assignment to solitary confinement. The only sanction considered more serious and used more sparingly at institutions other than Angola is transfer to a "tougher" institution.

About 50% of the inmate population has very few or no disciplinary write-ups; approximately 35-40% have sporadic write-ups; and 10-15% of the population has a history of repeated violations. This last segment is responsible for an estimated 60% of the disciplinary violations. Most write-ups occur in the early part of an inmate's sentence, while he is still adjusting to the institution.

Of all the rule violations, only about one-third are major infractions for which good time could be withheld. Of this group, good-time loss is the penalty in about one-third of the cases, in about half of which the penalty is carried out; in the other half the good-time loss is suspended for a period up to ninety days, during which the inmate may prevent the loss by good conduct. Thus, in only about 5% of all prison disciplinary violations and in about 15% of the serious violations is loss of good time the sanction imposed.

However, Louisiana correctional authorities feel strongly that the threat of loss of good time is an important deterrent to misconduct in prison. While admitting that transfer to another institution, isolation, loss of privileges and extra duty are probably stronger incentives to good behavior in the early part of long-term sentences, during the last two to three years of an inmate's term, the prospect of losing good time and thereby postponing release is of critical importance to prisoners. On this basis, Assistant Warden Bob Henderson at Dixon estimates that

60% of inmates are deterred from misbehaving by fear of loss of good time. He also indicated that if good time were not available as a sanction for bad conduct, isolation would have to be used more extensively; he was doubtful that present isolation facilities would be sufficient to handle this eventuality.

GOOD TIME FOR "PARISH JAIL INMATES"--
THE LEGAL FRAMEWORK

As discussed earlier, not all inmates housed in parish jail are contemplated within these good-time provisions. Those presumably intended to be covered are persons who have been convicted of a crime against the state and have not received sentences to imprisonment at hard labor. This excludes persons awaiting trial or "state" prisoners awaiting disposition of appeal or housed in parish jails because of insufficient room at state institutions.

However, there appears to be a hiatus in the law intended to apply to parish jail inmates. La.R.S. 15:571.3(A) allows for good-time credit to "/e/very prisoner in a parish jail convicted of a misdemeanor and sentenced to imprisonment for one year or more. . . ." (Emphasis added.) Under Louisiana law a felony is "any crime for which an offender may be sentenced to death or imprisonment at hard labor" and a misdemeanor is "any crime other than a felony."[10] Any person sentenced to "hard labor" is to be imprisoned in the custody of the Department of Corrections at a state institution; those sentenced without hard labor are imprisoned in parish jails. There are a number of "relative felonies"[11] the penalty for which may be hard labor, but which the judge may punish by imprisonment without hard labor (i.e., in the parish jail). As it is written, the law provides no authority for awarding good-time credits to parish jail inmates convicted of relative felonies who have not been sentenced to hard labor.

That La.R.S. 15:571.3(A) speaks of misdemeanants sentenced to one year or more raises a strong question whether this gap in the law was perhaps an unintentional one caused by an error in drafting. There are

a very few misdemeanors for which the greatest permissible penalty is one year's imprisonment,[12] but no misdemeanors are punishable by a term of imprisonment exceeding one year. Thus, it seems likely that the legislature intended those convicted of misdemeanors or relative felonies and sentenced to imprisonment for one year or more to be eligible for parish-jail good-time.

This theory is further supported by an analysis of the statute's original wording. When Act No. 5 of 1942 was incorporated into the Louisiana Revised Statutes of 1950 as Title 15 Section 571.3, it provided for a uniform system of good time to be applied to both parish jail inmates and state inmates, which system was very similar to the one presently in force for parish jails. That statute stated in pertinent part:

> Every prisoner in the state penitentiary or parish prisons convicted of a felony or misdemeanor and sentenced to imprisonment for one year or more. . . .

Later, that part of the law applicable to state inmates was changed and it has been changed again since, while the provisions governing parish-jail inmates are still essentially the same.

It seems likely that when Section 571.3 was amended to alter the rules governing state inmates, the words "a felony or" were deleted without thought being given to the many persons convicted of relative felonies who are incarcerated in parish jails.

Nonetheless, as the law presently reads on its face, the only inmates housed in parish jails who may earn good time, other than "state prisoners," are those few convicted of misdemeanors who have sentences of one year or more. Apparently, no court cases have been decided clarifying this issue.

Nature of Good Time and Means of Computation

La. R.S. 15:571.3(A) provides in pertinent part:

> The sheriff of the parish in which the conviction was had shall have the sole power to determine when good time has been earned on which diminution of sentence may be allowed.

Thus, the statute sets no standards for awarding good time, but leaves to each sheriff the determination of when credit will be awarded, whether for not behaving badly, for positive performance by the inmate, or whatever standard is deemed appropriate. There is also no specific direction as to whether good time is to be awarded automatically or only after periodic evaluation, although the phrase empowering the sheriff "to determine when good time has been earned" might be argued to require use of the latter method.

As with good time for prisoners in Department of Corrections custody, parish-jail good-time is available only to accelerate final discharge and not to hasten parole eligibility.

Eligibility

As discussed earlier, only those convicted of misdemeanors and sentenced to one year or more are eligible for parish-jail good-time. This leaves out misdemeanants serving less than one year and, whether inadvertant or not, those convicted of relative felonies. There are no other exclusions written into the law.

Amount of Deduction

La.R.S. 15:571.3(A) and 571.4(A) establish the following formula for crediting good time to parish inmates: they may earn two months for every 12 months actually served during the first and second years of incarceration; three months good time for 12 months served during

the third and fourth years of incarceration; and four months good time for each 12 months served after the fourth year of incarceration.

> When, after allowance of good time on the above basis, the sum total of time actually served plus the total of good time earned shall leave less than one year of the sentence originally imposed or of the time to which the sentence has been commuted; the date on which the prisoner may be released shall be determined in the following manner:
>
> (1) If the expiration date of sentence without any further allowance for good time earned will occur in the second twelve months period from date of incarceration, then the prisoner may earn one-seventh off of the unexpired sentence for good time.
>
> (2) If the expiration date of sentence without any further allowance for good time will occur in the third or fourth twelve months period from date of incarceration, then the prisoner may earn one-fifth off of the unexpired sentence for good time.
>
> (3) If the expiration date of sentence, without any further allowance for good time earned will occur in the fifth twelve months period subsequent thereto, then the prisoner may earn one-fourth off of the unexpired sentence for good time./13/

Forfeiture and Restoration

The law makes no special provision for forfeiture or restoration of good time for parish prisoners. It does state that "/t/he sheriff of the parish in which the conviction was had shall have the sole power to determine when good time has been earned on which diminution of sentence may be allowed," and merely provides that eligible inmates may earn up to the amounts stated in credit against their sentences. Thus, it may be that the absolute discretion given the sheriff includes the power to take away good time already earned.[14]

However, it might be argued that because there is no provision for forfeiture, once the sheriff has determined that good time has

been earned, it vests in the inmate and cannot be taken away. Once again, no case law has been located to illuminate this issue.

It is also unclear whether good time that is not awarded within one year can be awarded later. Since no method of computation is spelled out by statute, it is likely that the sheriff may exercise his discretion to award the allowable good time at any point during the sentence. There is only one phrase that might argue against this interpretation:

> The computation of good time earned by prisoners in parish prisons shall be on a pro rata basis of two months earned good time for twelve months actually served time during the first and second years of incarceration. . . ./15/

However, the term "pro rata" is so ambiguous that it would be difficult to interpret therefrom a prohibition against awarding good time later that has not been awarded in a particular year.

Special Work Credit Provisions

In addition to the laws discussed above providing for regular good time for parish prisoners, there are two rather confusing statutes authorizing the awarding of diminution of sentence for performance of work by inmates. La.R.S. 15:571.9 provides:

> Sec.571.9. Good behavior allowance for convicted persons working under direction of police juries
>
> Any convicted person working under the direction of the police jury who renders efficient service and complies with all necessary rules and regulations shall have deducted from his term of imprisonment one-sixth thereof.

La.R.S. 15:571.10 provides:

Sec. 571.10 Application of work days to sentence of prisoner voluntarily performing manual labor on public works of parish; diminution of sentences of prisoners confined in Orleans Parish Prison

A. Any prisoner consenting to work under the provisions of R.S. 15:709 shall have as many days taken off or remitted from his sentence corresponding with the number of days during which he shall have performed work. The days shall be computed at the rate of ten hours work per day.

B. Notwithstanding any other provisions to the contrary, for work performed and/or attendance in rehabilitation programs and/or good behavior, any prisoner in the Orleans Parish Prison consenting to work either within the parish prison or on public works programs outside of the parish prison and/or to attend rehabilitation programs and/or demonstrating good behavior may at the discretion of the Criminal Sheriff in Orleans Parish be granted a diminution of sentence which shall take off or remit from said sentence as many days as the said prisoner shall have worked and/or attended rehabilitation programs and/or demonstrated good behavior.

La.R.S. 15:709 referred to in Subsection A of La.R.S. 15:571.10 states:

Sec. 709. Regulations for and discipline of prisoners

The governing authority of each parish may establish regulations for the working, safekeeping, clothing, housing and sustenance of those persons serving their sentences while working under its supervision as provided in R.S. 15:571.1 and for their discipline while idle and refractory, and may enforce reasonable penalties for infractions of their regulations.

While any convicted persons are worked under the supervision of the governing authority, they may be kept overnight, and at such times as they are not at work, in the parish jail or otherplace for safekeeping, as the governing authority shall direct. The governing authority may employ guards to watch and direct the labor of all persons working under its supervision.

La.R.S. 15:571.1, referred to in the first paragraph of Section 709 has been repealed, but its former provisions were as follows:

> When any person is convicted and sentenced by any competent court of this state, the parish of Orleans excepted, to imprisonment in the parish jail or to imprisonment and the payment of a fine or to imprisonment in default of the payment of a fine, he shall be committed to the parish jail and kept in close confinement for the full term specified by the court. All able-bodied males, over the age of eighteen years and under the age of fifty-five years shall be worked upon the public roads, parish farms or any other public works of the parish and shall be kept at work until expiration of the sentence of imprisonment. Where, in the discretion of the court, the person sentenced to imprisonment should be kept in close confinement, the court may so order.

The source of La.R.S. 15:571.9, 15:709 and the former 15:571.1 is Act No. 289 of 1942. With that background, it appears that the proper interpretation of the statutes is that they authorized requiring male prisoners, aged 18-55 to be required to work on public roads, public farms or other public works under the direction of the police jury of the parish, and that those persons so engaged are entitled to a reduction of one-sixth of their sentences.

This raises the question of when La.R.S. 15:571.10(A), giving day-for-day credit for working on public works, is applicable. The source of that provision is Act 121 Section 2 of 1888. That Act authorizes the criminal sheriff of each parish to set prisoners to work at manual labor on public roads, levees, streets, public buildings and improvements on public works inside or outside the prison, as determined by the police jury and municipal authority. Act 121 also provides that an inmate consenting to work on such projects shall be credited with one day off his sentence for every day worked.

An Opinion of the Attorney General of Louisiana[16] has ruled that the day-for-day provision, dating back to 1888 but brought forward in

the 1950 Revised Statutes, applies to parish inmates under 18 or over 55 years of age, prisoners who are not able-bodied, and female prisoners who volunteer to perform duties on public works; on the other hand, the one-sixth deduction, authorized by the more recently enacted Act 289 of 1942, applies to prisoners required to perform such duties under that statute brought forward as La.R.S. 15:571.1. The apparent rationale for this conclusion is that the older provision allowing more time off inmates' sentences applies to those who "consent" to work while the later provision, mandating that certain prisoners work, provides for less credit toward diminution of sentence.

Assuming that this reconciliation of Sections 571.9 and 571.10 is correct, the issue is further complicated by the 1966 repeal of La.R.S. 15:571.1. The repeal coincided with the adoption of the new Louisiana Code of Criminal Procedure, Article 890 of which was intended to replace Section 571.1. Article 890 provides:

> A sentence of imprisonment in the state penitentiary shall be served in conformity with the applicable provisions of Title 15 of the Revised Statutes that govern the state penitentiary.
>
> Any other sentence of imprisonment subjects the defendant to confinement and to labor unless otherwise specified.

The Official Revision Comments to the above article state that the second paragraph is in substantial conformity with former La.R.S. 15:529 and 571.1 in providing that non-hard labor prison sentences are to include labor unless otherwise specified, but that this principle is more broadly stated. For instance, the Comment notes,

> The work authorization of former R.S. 15:571.1 contemplated mainly road and farm work and was limited to able-bodied males, over 18 and under 55 years of

> age. The limitation is not retained in this article because there are certain tasks that can be appropriately performed by women prisoners and by males who are over 55 years of age. Abuse of the work authorization is not anticipated, but the sentencing judge will keep such matters in mind in determining whether to exempt prisoners from the otherwise applicable general work provision.

The obvious purpose for the repeal of Section 571.1 and enactment of Article 890 was to authorize sheriffs to require some type of work of all jail inmates. The legislature apparently did not envision thereby making any changes in the system of awarding work credits to parish prisoners. Nonetheless, because Section 571.1 is the base reference (through Section 709) for the day-for-day work credit authorized by Section 571.10, because its provisions formed the core of the statutory source of Sections 571.9 (allowing the one-sixth credit) and Section 708, and because the Article 890 eliminates the distinction between required and voluntary labor that formed the basis for the Attorney General's reconciliation of Sections 571.9 and 571.10, some meaning must be imputed to the legislature's 1966 action.

A number of approaches could be taken to interpreting the consequences of the repeal of Section 571.1 and enactment of Article 890:

1. It could be argued that because Section 571.10(A) provides for day-for-day good time for prisoners working under the provisions of Section 709, which in turn refers for its authority to Section 571.1, which has been repealed, then Section 571.10(A) no longer is effective and sheriffs therefore have no authority to award day-for-day good time as a reward for labor on public works and the like.

2. A second interpretation of the legislature's action is that because the new Article 890 eliminates the class of parish jail inmates

who were not required to work but could consent to do so and thereby earn more good time than those required to work, all inmates are now to be credited only with a one-sixth diminution of sentence for labor on public works and the like.

3. A result completely opposite to that reached under the first and second rationales is that all parish prison inmates may now be credited with day-for-day good time for labor on public works and the like or even doing other types of work. The reasoning behind this conclusion is that Section 571.10, authorizing the awarding of this much good time, refers to inmates working under the provisions of Section 709, which in turn refers to Section 15:571.1, which has been replaced by Article 890, authorizing that all parish jail prisoners may be put to work. Under this interpretation, it could probably be argued that the sheriff is now authorized to award day-for-day good time for any work performed by inmates.

4. A final scheme for rationalizing these statutes is to discredit the Attorney General's Opinion discussed earlier and to assume that the legislature intended to repeal Act 121 of 1888 /La.R.S. 571.10(A) authorizing day-for-day good time/when it enacted Act 289 of 1942 (La.R.S. 15:571.9 authorizing one-sixth diminution of sentence) and that the latter provision controls good time awarded for labor on public works and the like.

The one certain conclusion to be drawn from the above discussion is that the law authorizing good time as credit for work while in parish jails is uncertain and confused.

GOOD TIME FOR "PARISH JAIL INMATES"--
HOW IT WORKS IN PRACTICE

As discussed earlier, the law vests a great deal of discretion in the sheriff of each parish to determine the good-time policies for each jail. He may decide the standard to be used in awarding good time, whether it will be awarded automatically or contingently, and presumably whether earned good time may be forfeited and restored, for what causes and how much. The amount of deduction allowed is really the only limitation placed on the sheriff by law, and that limitation is only a ceiling on what may be awarded.

In order to gain some understanding of the policies and procedures followed by sheriffs in awarding and computing good time for parish jail inmates in their charge, the staff prepared a questionnaire to sheriffs, a copy of which is found in Appendix A of this report. As of March 20, 1978, twenty-six responses--or over a third of those sent out--have been received from the 64 sheriffs in the state. While this survey does not purport to be a scientific, random sampling of all the sheriffs in the state, the responses received are very instructive for the purposes of this report.

They show, above all, a tremendous amount of diversity in good-time policies from parish to parish. Of the sheriffs responding, three of the 24 indicated that no good time was afforded in the jails they operate. These were generally rural parishes where sentences were not very long and there were few inmates in the jails. Of the parishes where there is some good-time allowance, the questionnaire responses indicated that there is a split in terms of automatic and contingent

computation of good time. When asked to characterize their good-time programs in these terms, thirteen sheriffs answered that credit was "automatically awarded at some point in a sentence and taken away for unsatisfactory work performance and/or prohibited conduct." On the other hand, ten sheriffs indicated that "offenders are given the opportunity to earn good time on a daily, weekly, or monthly basis contingent on satisfactory work performance and/or conduct."

Various standards for earning good time are used by sheriffs, under the discretion allowed them by law. However, good conduct and proper performance of assigned work duties are the most common requirements for earning credit against sentence. Of those sheriffs responding to the questionnaire, nineteen indicated that good behavior is at least one consideration in awarding good time and fifteen stated that credit is given for proper work performance. In a number of parish jails, only trustees may earn good time for the work they perform; good conduct, and, occasionally, the type and seriousness of the offense determines which inmates are selected as trustees. Some sheriffs award good time at different rates and by different standards to inmates, depending on their situation in the jail. For instance, in one parish, good time is awarded at different rates for good behavior while inmates are in lockdown, for good behavior and satisfactory work to trustees, and for participation in work-release programs.

As discussed earlier, there is no clear directive in the law regarding the propriety of forfeiture of earned good time, the causes for which good time might be forfeited, or restoration of forfeited or unearned good time. Four sheriffs indicated that good time is not taken

away once it is earned, but the inmate is either not awarded credit during the period of misbehavior or the status required to earn good time (such as being a trustee) may be taken away. Fifteen responses indicated that any or all good time may be forfeited in proper circumstances.

The type of misconduct or disobedience meriting forfeiture of good time also varies from one jail to another. Ten sheriffs remove good time for any violation of the rules and regulations, while others do so for only serious offenses, failure to perform duties, major rule violations or repeated minor rule violations, commission of another crime while in jail or extreme misbehavior, bad conduct or an uncooperative attitude, and failure to work or misconduct on work detail.

Only three sheriffs indicated that there was any sort of hearing process to determine when good time is not earned or should be forfeited. In all other parishes, the procedure is merely for an official (usually the sheriff, warden or jail supervisor) or a committee composed of such officials to make the decision ex parte. In only one parish is there a procedure for true appeal from a decision regarding good time, and the recourse in that case is to the sentencing judge. The other responses indicated either that there is no appeal or that the "appeal" is to an individual involved in making the original decision.

Eleven sheriffs stated that forfeited good time may be restored in proper circumstances while six stated that forfeited good time may not be restored.

The amount of good time that can be credited to parish jail inmates is the only clear limitation on the sheriffs' power in this area. There

is no minimum amount that must be credited, but good time cannot exceed two months per year for the first two years (one-sixth of sentence), three months per year for the third and fourth years (one-fourth of sentence), and four months for each subsequent year (one-third of sentence). The responses to the staff's questionnaire reveal some interesting facts about the amount of good time awarded in parish jails.

Besides the three parishes that do not award any good time, six responses did not indicate at what rate good time credit is awarded. The other responses indicate that the following rates are applicable to inmates purely for good behavior: five days per month (roughly one-sixth) - four parishes; one-sixth of sentence - one parish; six days per month (roughly one-fifth) - two parishes; one-fourth of sentence - one parish; the amount allowed state inmates (presumably fifteen days per month) - one parish; the amount prescribed by law for parish jail inmates /La.R.S. 571.4(A)/ - one parish. The following amounts are credited to persons on trustee status or others who work around the jail: "two days for one" (presumably a cut of one-half in sentence) - four parishes; 2.7 days for each day served (a 63% cut in sentence) - one parish; one-third off sentence - two parishes; one-half off sentence - one parish; ten days per month (roughly one-fourth off sentence) - one parish; eight days per month (almost one-fourth off sentence) - one parish. Miscellaneous policies affecting the rate of good time include one-third off sentence given by one sheriff for participation in a work-release program; another allows two days for one (presumably one-half off sentence) for working

for the parish; and another awards three days for one (presumably two-thirds off sentence) to trustees on patrol to check fishing and trappers' camps and those assisting in rescue missions.

Clearly, many of these rates exceed the credit authorized under La.R.S. 15:571.4(A). Apparently only one parish graduates rates of good time that may be earned according to the number of years served, as provided by statute. One possible explanation for this phenomenon is the confusion in the statutes over when and how much good time may be awarded for work performed by parish inmates.[17] One conceivable interpretation of the law is that as much as one-half credit off sentence may be awarded for periods during which any sort of work is performed. However, there is no authorization to cut two-thirds or 63% off a sentence for working as some parishes apparently do. Likewise, there is no authority to award more than one-sixth of sentence merely for good behavior, during the first two years of incarceration. It is possible that inmates serving very long sentences in parish jails who are credited with, for instance, one-fourth of their sentences as good time throughout their stays in jail are not receiving more time off than they would receive under La.R.S. 15:571.4(A) since the rate they would receive under that statute may coincidentally average out to be one-fourth. Likewise, any inmate may not consistently receive the full amount of good time allowed by the sheriff, so he may not receive in the long run any greater amount of good time than is allowed by law. However, as a general policy, it would seem improper to award good time at a higher rate than is allowed by law, since some inmates undoubtedly are given the full credit allowed by jail policy throughout their sentences.

Sheriffs also apparently award good time to inmates convicted of relative felonies, despite the fact that the letter of the law does not authorize them to do so, except perhaps under the provisions allowing diminution of sentence for working.

It was the unanimous feeling of all sheriffs responding to the questionnaire that good time is an important and effective device to control inmate behavior and to provide an incentive for good conduct and for performing delegated duties. Only two respondents suggested any change in the system: one felt the sheriff should be given greater discretion to award more good time and another felt changing his automatic system to a contingent one would offer inmates a greater incentive to positive achievement.

CHAPTER III

ALTERNATIVES AND RECOMMENDATIONS

In evaluating the operation of good time in Louisiana and in analyzing alternatives to the legislative provisions presently in force, it is appropriate to return first to examine the continuing validity of the three-fold purpose of good time discussed in Chapter I of this report.

As mentioned earlier, the good-time system has often been justified as a means of encouraging rehabilitation and of "selecting" for early release inmates who have been rehabilitated. Although very little attention has been focused upon the impact of recent empirical findings and modern thought on these premises, much of what has been written about parole may as validly be applied to this underlying rationale for good time.

First of all, if good time is used to encourage participation in institutional rehabilitative programs, the evidence points rather strongly toward the inability of such programs to rehabilitate inmates.[1] Moreover, many modern observers strongly object to coercing treatment by threatening longer incarceration if inmates do not submit to institutional rehabilitative efforts.[2] In fact, one theory explaining the failure of prison rehabilitative programs to affect post-prison behavior is the fact that participation in them is coerced rather than voluntary.[3]

Of course, in Louisiana, although the law provides for awarding good time on the basis of inmate participation in "self-improvement activities," in practice receiving good time has nothing to do with program participation and everything to do with <u>not</u> misbehaving. Thus,

in reality, this part of the first rationale for good time appears already to have been abandoned in Louisiana.

If the theory behind awarding good time for not misbehaving and removing it for misbehaving is to "rehabilitate" the inmate by "teaching him a lesson," there appears to be no solid evidence that an inmate is influenced in his post-incarceration behavior by good-time policies. Moreover, behavior in prison has been found to be unrelated to recidivism and should not be used as a criterion for early release if the purpose is to select rehabilitated prisoners.[4]

Therefore, it is submitted that the rehabilitative treatment-purposes of good time are not valid, cannot justify the use of that mechanism and should be abandoned in fashioning any legislation governing its administration. Institutional programs should be expanded and improved, but participation in them should not be tied to any benefits other than those enrichments which come from such participation.

The second purpose for the good-time system is to temper otherwise unreasonably long sentences. As quoted from the Attorney General's Report in Chapter I of this report, good-time provisions are best viewed as "an inevitable corollary of our high sentences."

In discussing this aspect of good time, a presumption is made that judges will not adjust their sentences according to changes in the credit allowed for good time. A questionnaire sent to Louisiana judges[5] indicated that only 18% of the respondents consider the good-time release-date when sentencing and another 9% consider both parole eligibility and good-time dates. Thus, if one can generalize, three-fourths of judges will presumably give the same sentence whether the

defendant will be earning twenty-five, fifteen or no days' credit per month by good time. Thus, it seems safe to assume that if good time did not exist in Louisiana, those inmates who (1) are not eligible for parole or (2) are eligible for parole but are not released by the parole board and (3) are eligible to be released on good time would be serving roughly twice as long (if sentenced before September 9, 1977) or one-third longer sentences (if sentenced after September 9, 1977) than they are presently.

There was extensive discussion in the staff's report on parole decision making regarding long prison terms.[6] Empirical evidence was cited to show that longer prison terms generally increase the likelihood that offenders will return to crime when released and do not deter commission of crime by others. Indiscriminate use of long prison sentences for purposes of incapacitation has not been shown to be effective, is unfair and inaffordably costly.

At the time the parole report was published, the staff cited 1973 statistics indicating that Louisiana had the ninth highest per capita rate of incarceration in the nation.[7] In November, 1977, new statistics were released that take account of some of the recent dramatic increases in the Louisiana prison population (although they do not include increases in prison population resulting from the decrease in good time awardable from twenty-five to fifteen days per month). Louisiana now ranks first in per capita incarceration rate in the United States at 25 persons per 10,000 civilian population. This rate is three times higher than the rate in Canada, Australia and New Zealand; four times higher than in West Germany; and five times the rate in France and Italy.

The average per capita rate in the United States is 21.5 per 10,000 population.[8]

The budget request by the Louisiana Department of Corrections for fiscal year 1978-79 is up from the current $60.8 million to nearly $80 million. In addition, the Ehrenkrantz Group's research for the Prison System Study Commission estimates that even if present practices continue, and disregarding the decreases in good time under Act 633 of 1977, the state will have to spend another $51.8 million in capital construction for corrections by 1982.[9] That study also recommends that some alternative strategy be adopted to decrease the state's spending in the correctional area.

The Department of Corrections had estimated that Act 633 as originally introduced (which would have decreased allowable good time by 60% rather than the 40% decrease that ultimately passed) would cost over $12 million per year in operating costs in addition to a $44 million initial capital outlay. Further lengthening of sentences by complete elimination of good time would be even more expensive. The staff has requested an analysis from the Louisiana Criminal Justice Information Service (LCJIS) as to the impact elimination of good time would have on the inmate population in Louisiana. That study is not yet completed but the Commission will be provided with its results when they are available.

Moreover, if the purpose of eliminating good time is to pursue a policy of across-the-board incapacitation to protect the public, the plan is probably ill-conceived. A policy of selective incapacitation of the most dangerous offenders is much more practical and workable.

Insofar as it relates to good time, this strategy is already in force as a result of Act 633 of 1977, eliminating good time for habitual violent offenders. Louisiana's policies of increasing prison population at the fastest rate in the United States (31%) and its leap from ninth to first place in the country and in the free world in per capita rate of incarceration has required huge expenditures that were needed elsewhere, but they have not had any discernable effect on the state's crime rate relative to that of other jurisdictions. And the long-term effects of heavy reliance on extended institutionalization may well be to increase the crime rate in the future.

Thus, insofar as the elimination of or decrease in credit for good time is intended to lengthen prison sentences, it is submitted that such policies should not be pursued.

The amount of diminution in sentence presently allowed under Louisiana's good-time statute is in line with the average allowance in other states that award flat credit for good behavior.[10]

The third and most important purpose performed by good time is maintaining institutional discipline. As discussed in the preceding chapter, institutional and corrections authorities feel very strongly that good time is an important device in controlling inmate behavior and that its abolition could have serious consequences on prison management.

The staff attempted to poll authorities in the states wherein there is no good-time system to determine how its absence affects inmate discipline; however, none of the states contacted responded. Louisiana correctional authorities indicate that it is too early to

estimate the institutional impact of the 1977 enactment excluding certain habitual offenders from good-time eligibility. Since good time has its greatest coercive force near the end of the term, it will probably be a number of years before the effect on inmates' behavior of their being ineligible for good time can be assessed. However, the evidence tends to support the thesis that good time is an important and effective discipline device in Louisiana prisons and in those of practically every other jurisdiction in the United States.

ALTERNATIVE RECOMMENDATIONS ON DEPARTMENT OF CORRECTIONS GOOD TIME

Before discussing the various alternative approaches the Commission might take to good time administered by the Department of Corrections, one word should be said regarding interaction between good time and the proposed parole formula. The parole formula is entirely independent from the functioning of good time. Under the present parole system, possible deferral of parole because of bad behavior is an incentive for good behavior by those who are eligible for parole; good time is an incentive for good behavior by those who are ineligible for parole. Likewise, good time is a means of early release for those ineligible for parole and those who are eligible for parole but denied by the Board.

Under the parole formula, parole release is an incentive for good behavior by those who are eligible for parole and whose release dates are earlier than they would be under the good-time statute or if such persons were required to serve their full sentences. Good time is an incentive for good behavior by those who are ineligible for parole and those eligible for parole whose release dates are beyond two-thirds of their sentences. Any of the following good-time proposals is entirely compatible with the proposed parole formula.

1. Present System Modified

This alternative would change the statutes to conform to current practice. The awarding of good time contingently (after monthly evaluation) for self-improvement activities rather than just good behavior and performance of duties should be abandoned for several reasons. First, the contingent and self-improvement aspects of the system are

remnants of the treatment-rehabilitation orientation of good-time statutes. Secondly, authorities are not following the present statute requiring periodic evaluation because of the great cost and administrative burden that would result. Finally, the basic purpose of good time and its most effective use is to control institutional behavior; it should therefore be administered as simply as possible to serve that purpose alone. This plan essentially embodies the "bad time" concept proposed by the Louisiana District Attorneys Association.

This proposal would retain the current fifteen days' credit for thirty, which is in line with other similar statutes.

Two possible revisions could be considered under this alternative. The first is to require supervision by parole and probation officers of those released on good time, as is done in some other states.[11] This measure could be used to provide greater control of those released early by diminution of sentence and the possibility of return to prison if conditions are broken.

A second variation on the present system would vest discretion in the Board of Parole or in institutional authorities to require forfeiture of good time, up to 180 days, by inmates whose parole is revoked, rather than such forfeiture being mandatory as it is under the present statute. This is similar to a bill prepared by the staff when considering parole and probation services which the subcommittee voted to defer until consideration of good time. Such a provision would be closer to the practice in the vast majority of other jurisdictions, which do not extend the penalty for parole revocation to forfeiture of good time earned while in prison prior to parole.[12]

2. Concentrate Good Time Credit at End of Sentence

A second approach that might be taken to good time is to fashion it more precisely to fit the needs of institutional security. This could be done by allowing more credit than presently provided (such as one day of good time for each day served) but concentrating that credit into the last four years of sentence and not allowing any good-time credit before that time. This would give institutional authorities greater leverage by authorizing them to grant or deny a larger diminution of sentence, but would probably not shorten sentences on the whole as much as the present good-time statute does. Yet this leverage could be applied at the time when good-time loss is of the greatest concern to inmates--within two years of possible release. Moreover, the less serious offenders (those with less than a six-year sentence) would be released earlier while those with longer than a six-year term would be held longer than they are under present statute.

To facilitate good-time's usefulness as a disciplinary tool, this alternative could also vest institutional authorities with discretion they do not have under present law to cause forfeiture of any or all previously earned good time and to restore any forfeited good time at a later date.

3. A Graded System

A third alternative is for Louisiana to return to a system by which institutional authorities grade inmates on a scale that determines how much good time each will earn. Louisiana had such a system before the present statute was adopted. Such a scheme could be modeled on the Mississippi, Arkansas and Texas statutes.

One important disadvantage to adopting such an alternative is the administrative burden that would be involved in administering this system. In addition to administrative and staff time required to classify and periodically reclassify inmates, the difficulties of awarding and computing good time at the proper rate for each prisoner could be difficult. The advantage is that such a scheme would give institutional personnel greater latitude in administering good time and in individualizing the process so that it would be more effective. Such a system might also be used to retard the early release of inmates judged dangerous by prison authorities.

4. Abolish Good Time

This alternative has been suggested by some in order to eliminate good time as an early release mechanism. It is submitted that such a step would hinder the administration of institutional security and would unduly lengthen sentences across the board. For these reasons, the staff does not recommend this alternative.

RECOMMENDATIONS ON GOOD TIME ADMINISTERED BY SHERIFFS

There appears to be no strong sentiment for removing or limiting the sheriffs' discretion to award good time to parish jail inmates to encourage good behavior and provide an incentive for doing work while in jail. The inmates involved are not particularly serious offenders and those who administer the program appear to be unanimous in their feeling that it is effective in performing its intended functions.

The greatest problems apparent in the system arise from poorly drafted, ambiguous and unnecessarily complex laws whose uncertainty perhaps encourages local officials to ignore them. To begin with, the statute authorizing awarding of local-jail good-time should be changed to clearly include prisoners who have been convicted of relative felonies and sentenced without hard labor. This would conform the statutes to present practice.

Next, the provisions for graduated awarding of good time according to the number of years served, which are apparently not generally followed and which are submitted to be unnecessarily complicated should be replaced by a provision vesting discretion in the sheriff to accelerate inmates' releases by up to one-third of their sentences for good behavior. Next, the conflicting laws on additional good time for performing work duties should be replaced by a provision clearly authorizing the sheriff to award credit of up to one-half of an inmate's sentence for good conduct and proper performance of any type of work duties assigned.

On the question of forfeiture and restoration of good time, it is submitted that, as with the rest of the legal provisions controlling parish-jail good-time, it is best to leave a great deal of discretion in each local sheriff to administer his program as he sees fit. However, there should be some provision in the law stating that the sheriff may take away any or all earned good time and likewise may restore forfeited good time if he finds the situation so warrants.

One area in which the local good-time practice does appear to be lacking is in the failure to provide for constitutionally mandated procedures when good time is denied an inmate or when it is forfeited. The Wolff case discussed earlier is not limited in application to prisoners in state institutions but apparently to any person subjected to loss of good time. The sheriffs' questionnaire indicated that the required procedures are not being followed. Legislation should be enacted mandating that local jail officials follow the minimal procedures of Wolff.

APPENDIX A

Questions Regarding Good Time

1. Correctional systems, in general, operate their good time programs in one of two ways. Please indicate which of these two practices governs your good time.

   CHECK ONE:

   _____(a) Automatically awarded at some point in a sentence and taken away for unsatisfactory work performance and/or prohibited conduct.

   _____(b) Offenders are given the opportunity to earn good time on a daily, weekly, or monthly basis contingent on satisfactory work performance and/or conduct.

2. La.R.S. 15:571.3 authorizes the sheriff of the parish in which a conviction was had to be the sole power to determine when good time has been earned by a prisoner sentenced to the parish prison. In your parish what criteria are used in making this determination?

3. What procedures does your office use in awarding and recording good time for prisoners sentenced to the parish prison?

4. What procedures does your office use in awarding and recording good time for state prisoners being held in your parish prison?

5. How may good time be taken away from a parish prisoner?

6. What procedures does your office use in taking good time from a parish prisoner?

7. How much good time may be taken away from a parish prisoner?

8. May a parish prisoner earn back good time which he has lost?

9. To what forms of appeal does a parish prisoner have access in the event that he loses good time?

10. Does the sheriff's determination as to the good time earned by a parish prisoner reflect the offender's "good behavior" or "absence of bad behavior"?

11. In your opinion, what is the primary function of good time?

12. In your opinion, does your present good time policy adequately serve this function? If yes, why? If no, what changes would you recommend?

FOOTNOTES

CHAPTER I

[1]The U.S. Attorney General's Survey of Release Procedures: Parole, Vol. 4 (Washington: U.S. Government Printing Office, 1939), p. 493. (Hereinafter cited as Attorney General's Survey).

[2]Ibid., p. 495.

[3]Edwin Sutherland, Criminology (Philadelphia: 1924) pp. 508-509.

[4]Connecticut, Tennessee, Louisiana, Alabama, Georgia, Ohio, Massachusetts, Michigan, and Maine. See Attorney General's Survey, pp. 455-456.

[5]Governor's Pardon, Parole and Rehabilitation Commission, Staff Analysis of Probation and Parole Services and Parole Decision-Making Procedures in Louisiana, Ch. II, pp. 1-5. (Hereinafter referred to as Staff Analysis).

[6]Robert Carter, Richard McGee, Kim Nelson, Corrections in America (Philadelphia, 1975) pp. 118-119. (Hereinafter referred to as Carter, et al).

[7]Attorney General's Survey, p. 493.

[8]P. Tappan, Crime, Justice and Correction (New York: 1960) p. 704; Comment, "The Problems of Modern Penology: Prison Life and Prisoners' Rights", 35 Iowa Law Review 671, 693 (1967).

[9]Robert R. Smith, "A Survey of Good Time Policies and Practices in American Correctional Agencies," Journal of Criminal Justice, Vol. 3 (1977) p. 237. (Hereinafter referred to as Smith.)

[10]American Correctional Association, Manual of Correctional Standards (Washington: 1954) p. 355; Daniel Glaser, The Effectiveness of a Prison and Parole System (Indianapolis: 1964) p. 172.

[11]Carter, et al., p. 199.

[12]Attorney General's Survey, p. 493.

[13]Ibid., pp. 493-494.

[14]Arkansas, Connecticut, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, Washington, Virginia (for special good time), Vermont, Texas, and South Dakota.

[15]Attorney General's Survey, p. 501.

[16]Alabama, California, Connecticut, Delaware, Florida, Hawaii, Minnesota, Mississippi, New Jersey, New York, Oklahoma, Oregon, and Washington have only statutory good time, while Alaska, Colorado, Georgia

Iowa, Kentucky, Massachusetts, Michigan, Maryland, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Vermont and West Virginia provide for both statutory and special good time.

[17]Smith, p. 239; Attorney General's Survey, p. 494.

[18]See e.g., Alabama, Alaska, Massachusetts, Minnesota, New Jersey, North Dakota, Ohio, Oregon, Rhode Island and West Virginia.

[19]Alabama Statutes 45 Sec. 253.

[20]See e.g., Alaska, Colorado, Connecticut, Florida, Georgia, Iowa, Michigan, Nebraska, Nevada, New Mexico, South Dakota, Tennessee and Wisconsin.

[21]Florida Statutes Sec. 944.27.

[22]Texas Statutes Art. 6181-1.

[23]Kentucky Statutes Sec. 197.045.

[24]See e.g., West Virginia, Vermont, and Nevada.

[25]See e.g., California, Maryland, Mississippi and North Dakota.

[26]Arkansas, Alaska, Florida, Hawaii, Connecticut, Georgia, Kentucky, Massachusetts, Michigan, Minnesota, Montana, Nebraska, North Dakota, New York, New Mexico, Oklahoma, South Carolina, Texas, Virginia, and Washington.

[27]Attorney General's Survey, p. 509.

[28]418 U.S. 539, 41 L.Ed.2d 935, 94 S.Ct. 2963 (1974).

[29]41 L.Ed.2d at 950.

[30]41 L.Ed.2d at 951.

[31]Id.

FOOTNOTES

CHAPTER II

[1]Attorney General's Survey, p. 495.

[2]"Relative felony" is the designation assigned to a crime for which a sentence of imprisonment may be imposed with or without hard labor.

[3]468 F.2d 51 (5th Cir. 1972).

[4]Texas v. Pruett, 94 S.Ct. 118 (1973).

[5]La.R.S. 571.3(B).

[6]La.R.S. 571.4(B) and (C).

[7]See pages II-8 and 9 for definition of minor privileges.

[8]See page II-8 for definition of extra duties.

[9]All of the foregoing information regarding the rules, regulations and procedures was extracted from the Department of Corrections' publication "Adult Rules, Regulations and Disciplinary Procedures," effective January 1, 1977.

[10]La.R.S. 14:2(4) and (6).

[11]See e.g., La.R.S. 14:53 (arson with intent to defraud); La.R.S. 14:67 (3rd conviction of theft of less than $100); La.R.S. 14:45 (simple kidnapping).

[12]Simple escape by a person not sentenced to the Department of Corrections is a misdemeanor punishable by one year's imprisonment (La.R.S. 14:110). Bribery of voters is punishable by one year, not at hard labor (La.R.S. 14:119). Bribery of parents of school children is also punishable by imprisonment of up to one year, not at hard labor (La.R.S. 14:119.1), as is corrupting influence (La.R.S. 14:120), intimidation and interference in the operation of schools (La.R.S. 14:122.1), false swearing (La.R.S. 14:125), injury to public records (La.R.S. 14:132), obstruction of court orders (La.R.S. 14:133.1).

[13]La.R.S. 15:571.4(A).

[14]La.R.S. 15:571.3(A).

[15]La.R.S. 15:571.4(A).

[16]Opinions of the Attorney General of Louisiana, 1950-52, p. 187.

[17]See Chapter II, pp. 19-24.

FOOTNOTES

CHAPTER III

[1]Staff Analysis, Ch. IV, pp. 10-14.

[2]Ibid., p. 13.

[3]Ibid.

[4]Ibid., p. 27.

[5]Survey by Staff of Governor's Pardon, Parole and Rehabilitation Commission, An Analysis of District Judge Responses to Questions Relating to Sentencing, Sentence Alternatives, Participation in the Parole Process, and Confidentiality of Presentence Investigations.

[6]Staff Analysis, Ch. 5, pp. 8-29.

[7]Ibid., p. 26.

[8]"Proportion of Prisoners per 10,000 of Population," Corrections Compendium, Vol. II, No. 8, February-March 1978, p. 12.

[9]Louisiana Prison System Study Commission, Report by the Ehrenkrantz Group," Phase 3 Report: Draft; Future Strategies," p. 1.1.

[10]Ch. I, p. 6, supra.

[11]Ch. I, p. 4, supra.

[12]Ch. I, p. 7, supra.

INTRODUCTION

This special technical report is in response to a request by the Governor's Pardon, Parole and Rehabilitation Commission to estimate the impact of eliminating "good time" in terms of increased institutional population and costs.

What follows is a preliminary exploratory analysis projecting the Department of Correction's institutional population over a ten year period form 1979 to 1989. The study is based on information provided by the Department of Corrections and the Department's automated information system--CAJUN (Corrections and Justice Unified Network). The model assumes a constant entrance population and the projections are based on a one year pattern of exits. Consequently, the findings are tentative and provide only a general indication of the effect of the proposed change in Correction's policy.

A more in-depth analysis based on a broader data base is necessary before any conclusions or final decisions on the matter can be made. The Center recommends further analysis employing an expanded data base and a dynamic projection model.

METHODOLOGY

For the purpose of this technical report, it was assumed that an imaginary state law eliminating all Good Time sentence credit was going into effect on January 1, 1979. All persons processed into the Louisiana Department of Corrections prior to that date would not be affected. As to the size of the unaffected correctional population, a projected figure of 7,525 was provided to LCJIS by the Louisiana Department of Corrections. The Department of Corrections also provided their latest (1976-1977) admission and exit statistics by length of sentence.

The approach adopted in this report is admittedly superficial and does not intend to precisely measure the impact of eliminating Good Time on Department of Correction's population. Several assumptions were made which distort the accuracy of the projection data. These assumptions were unavoidable in the light of insufficient time available to obtain and research the needed information.

Basically, the approach adopted herein was to observe the exit process of two different correctional populations while maintaining a constant inmate entrance number into Department of Corrections. One population group was the 7,525 inmates not affected by the new legislation. Their yearly exit rate can be expected to proceed along present lines with 61.1 percent of their yearly exit number based on a Good Time release and 31.7 percent parole release. The balance of the exits is distributed among severla release types including sentence expiration, commutation, pardon, court order, escape, death, and other. The second population group studied consisted of inmates arriving at Department of Corrections between January 1, 1979, and December 31, 1989.

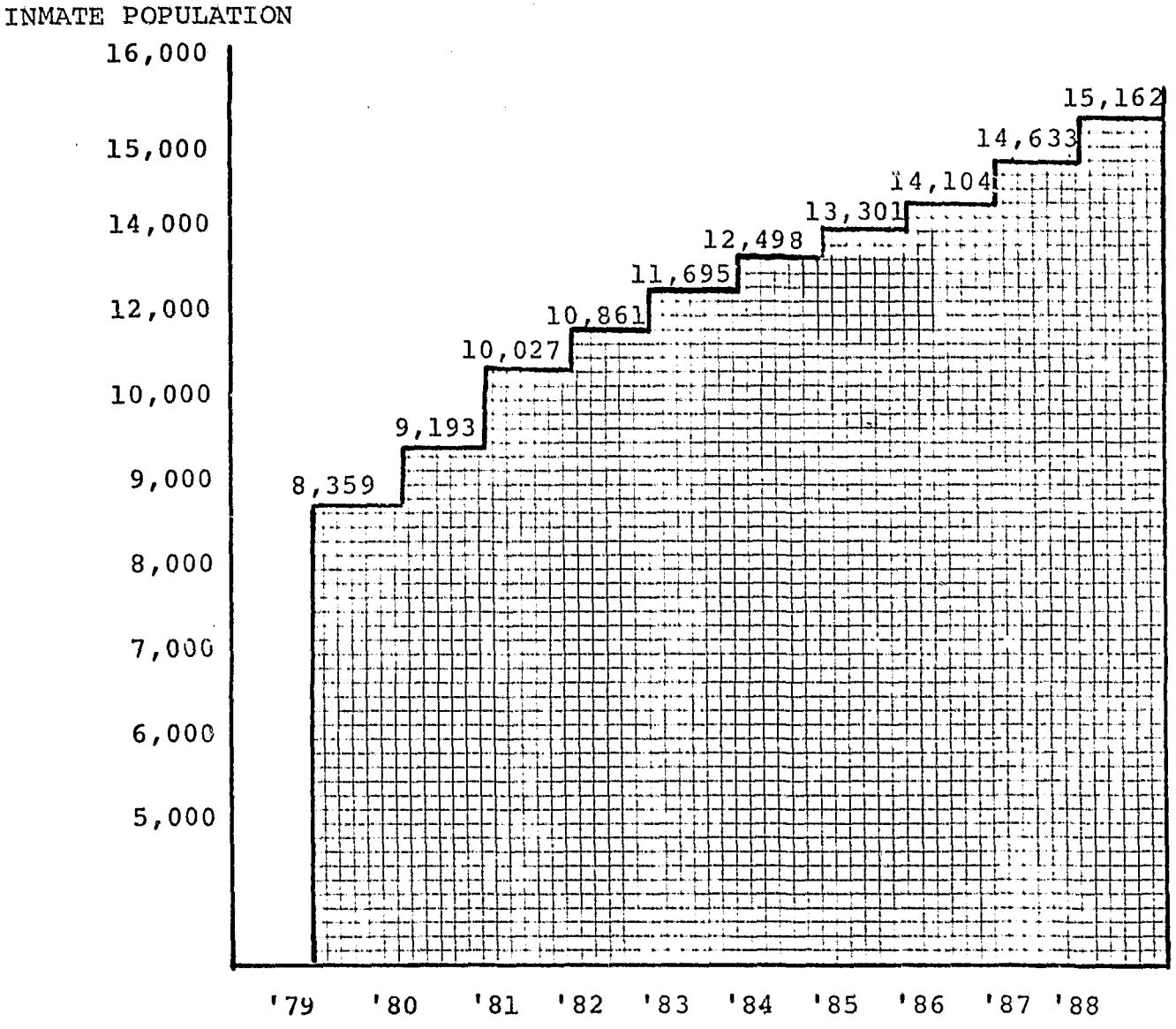
The exit process of this group would be different from the first group since Good Time exits would no longer be available to it. It was assumed that the other exits of Parole and Sentence Expiration would be the most likely exits to be affected. The remaining exits of court order, commutation, etc. were thus held constant. Another major assumption adopted was that criminal justice process outside the Department of Corrections would remain constant through this ten year period. For example, it was assumed that judicial sentencing patterns would not change towards shorter sentences, thus compensating for the absence of Good Time. In a dynamic enviroment such as the criminal justice system, such assumptions obviously limit the validity of any projected impact on the correctional population.

It was estimated that parole exits would increase in the new population group based on a 39 percent parole release rate figure obtained from the Research Director's Office of the Governon's Pardon, Parole and Rehabilitation Commission. It was assumed that the remaining 61 percent of the parole eligible population would exit through the Sentence Termination route.

The number of exits from each of the two groups were calculated for the years 1979 through 1980 and were applied, on a sequential basis starting with the year 1979, against each beginning year's population total and the constant inmate admission frequency total of 2,567. Thus, the resulting totals for each year approximate the size of the Department of Correction's population as adjusted for the absence of Good Time exits, from 1979 to 1989. The graph on the following page portrays these projection totals.

PROJECTED CORRECTIONAL POPULATION OF THE LOUISIANA DEPARTMENT OF CORRECTIONS AS AFFECTED BY THE ELIMINATION OF GOOD TIME SENTENCE CREDIT

1979 - 1988



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