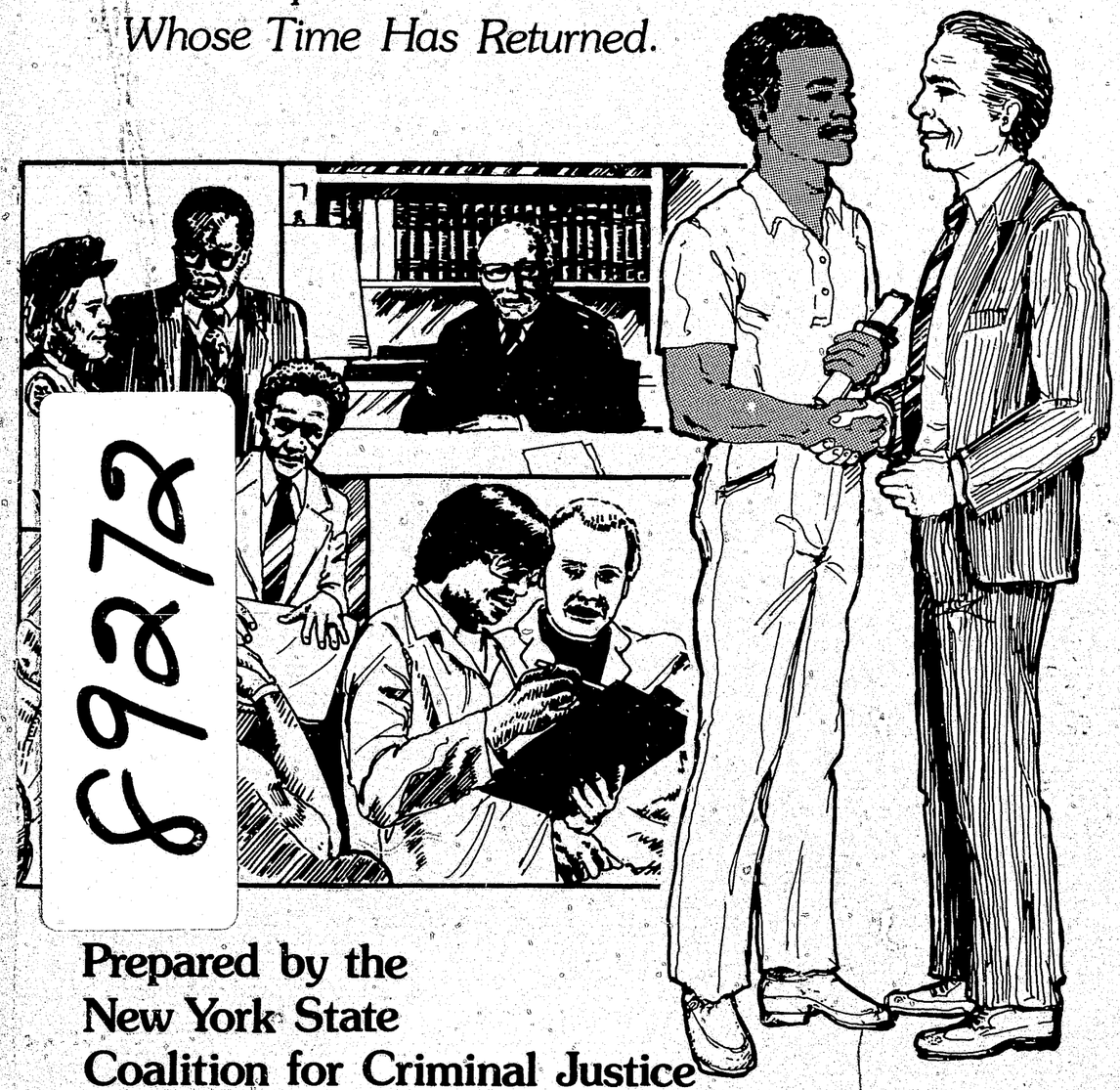
EARNED GOOD TIME

...A Concept Whose Time Has Returned.



Prepared by the
New York State
Coalition for Criminal Justice

The Bottom Line:

In the course of studying prison good time in New York State, we discovered that people all over the state want to see the present system changed. There is a common core of problems and complaints that were identified for us by inmates, guards and superintendents alike. We found that the bottom line of those who have been calling for change and the bottom line remedy to the immediate problems with good time coincide. All these people, plus hundreds of interested citizens and dozens of professional and civic organizations have endorsed good time off the minimum as a reward for good behavior and program participation. This report tells you why.

Earned Good Time...
A Concept Whose Time Has Returned

A Report of the New York State
Coalition for Criminal Justice

April 1982

What's In This Document

Acknowledgements

This report is the product of many hands. It is the culmination of a year-long study made possible by the Edna McConnell Clark Foundation. We are much indebted to Ken Schoen, director of the Justice Program and to Steve Kelban, associate program officer, for their confidence in the Coalition.

During the past year many persons worked with the Coalition in its effort to understand the issues and problems of good time. The staff, Irene Jackson, Diane Geary and Peter Pollak, are appreciative of the cooperation offered us by the staff of the Department of Correctional Services and Commissioner Thomas Coughlin and by the staff of the Division of Parole and its chairman Edward Hammock. There are too many people, both in the central offices of these agencies and in the field who were generous with their time and interest to thank them all individually.

We owe a special thanks to dozens of men and women incarcerated in the prisons of this state who shared their ideas and hopes with us. We hope that this report measures up in some small way to their expectations.

The Good Time Project enjoyed the support of the Coalition's membership, its policy committe and above all those who served on the good time subcommittee. David Leven, Al Kunz, Doug McDonald, Lanny Walter and Susan Finklestein offered wise counsel and sustenance and Jonathan Gradess who chaired the subcommittee deserves credit for never letting the staff forget all that was expected of us.

Others helped on specific portions of this report. Lanny Walter provided insights into the sentencing laws and authored Appendix B. Cynthia Chertos assisted in the design and analysis of the opinion survey. Jennifer Wolff was the "art director" and designed the cover. Clerical assistance is no small portion of any office and the Coalition's Sarah Lawrence did much more for this report than type it.

Like most project coordinators, I am guilty of wanting to do more reading and research and wait a little longer to put conclusions on paper. Fortunately, my "supervisors" Irene Jackson and Diane Geary, pressed me to get on with it. During the course of the year their help was invaluable. Diane deserves particular credit for undertaking the historical research that went into Appendix A. Irene was a thorough editor and provided constant advice and information. Her dedication and experience enabled this project to maintain a steady course. It is for these reasons and more that we dedicate this report to her.

As project coordinator, I must share the credit for all that is good and valuable in this report with those just cited and I must bear responsibility for the faults that some are sure to find. I shall accept that burden gratefully if this report continues the dialogue and moves us in the direction of rational and equitable reform.

Peter G. Pollak, Coordinator
The Good Time Project

Introduction

Good Time is the name given to a correctional policy that permits a reduction in the amount of time a person must serve of a sentence in prison based on general adjustment to prison rules (good behavior), on work performance and program involvement, and in some states on special behavior that is said to merit this reduction. Good time has been a standard feature of prisons in the United States since the mid-nineteenth century and some form of good time exists in all but five or six States.[1]

Historically, good time has served multiple purposes in New York as elsewhere. Varying with sentencing philosophy and practice, it has taken different forms with different administrative mechanisms and therefore has been changed regularly to keep pace with changing laws and policies. In New York, good time has been subjected to frequent revision over its long history. Although no major changes have occured in recent years, a growing number of organizations, agencies and individuals have been calling for one particular revision of the current law -- namely, restoring the possibility of earning good time off the minimum sentence.

At the beginning of this project we were told that there were two obstacles to this plan. First, we were warned that the public would oppose any measure that appears to make things any better for "criminals". Second, we found legal, procedural, and policy questions were raised with respect to both the present system and its proposed alternatives. While this report concentrates on the substantive issues and offers what we believe to be a reasoned and reasonable assessment of the proposition

1. Hawaii, Pennsylvania and Utah have not had good time for several years. Recent changes adding or abolishing good time for some or all inmates have occurred in Alabama, Arizona, Kansas, Michigan, and Missouri.

that good time off the minimum can be restored, our research and travels enabled us to test the validity of the first "obstacle".

In choosing to study good time, the New York State Coalition for Criminal Justice was acting on the supposition that an intensive investigation by a public-interest organization would help clarify issues, identify and evaluate solutions, and facilitate agreement. We began this project in the belief that good time was an inmate issue; we conclude it in the knowledge that it is an issue that impacts on all the significant actors in the criminal justice system. Of course, the major complaints and recommendations of inmates are presented in this document, but so are the views of a broad spectrum of citizens, officials, professionals and employees at all levels in the system. Almost to a person we found agreement that a more efficient and effective good time system was needed in New York. And rather than finding people closed to the proposition that the system can be improved, we found a consensus for altering the present system in a way that would allow good time off the minimum for inmates who are willing to use the opportunity to engage in educational, vocational or therapeutic activities.

In order to understand why the public we spoke to favors good time, it will be necessary to understand how the system operates in this state. A brief description of the present good time policies leads in Part I of this report to the question of how those policies evolved. In particular we felt it was important to ascertain why the legislature eliminated good time off the minimum in 1967 and if the rationale for eliminating it still applies today.

Four areas of the present system were called to our attention as needing investigation and analysis. Our findings on these problem areas are presented in Part II of this report. Out of problems, solutions must flow; our suggested solutions are to be found in Part III.

Of necessity, some problems are more central than others and some solutions are more urgently needed. After one year of study, we reached the conclusion that for some aspects of good time more research, more discussions and more analysis was still necessary. Our recommendations therefore fall into two parts -- changes which can take place immediately and those which deserve further study. As an aid and stimulant to further study, suggestions for a model good time system are presented in Part IV.

A few words describing the methodology employed by the project staff are in order. The Coalition set out to learn as much as could be learned about good time. We wanted to know the origins of the concept, how it has changed over the years, how it works in other states, how the current system really operates in New York, and what changes people suggest for the future.

A major objective was to compile opinion from all quarters and perspectives. To that end staff visited twelve of the state's 33 prisons, talked to superintendents, correction officers, counselors, clerks and other departmental employees. Six hundred persons were asked to complete a survey questionnaire and nearly 400 responded. Around 200 inmates also completed the questionnaire and we met in person with approximately an equal number in sessions where good time was given a thorough examination.

In addition to correctional employees and inmates, we sought the views of the Department of Correctional Services, the Division of Parole, the Commission of Correction and other state agencies. We contacted officials of the three unions that represent DOCS employees as well as persons in other branches of the criminal justice system including prosecutors, judges, defense attorneys, legislators, law school professors and academic specialists. Ideas were sought from private sector organizations with an interest in crime and corrections, including the Jaycees and NAACP, both of which have inmate chapters at state prisons. And last but not least, we received valuable information, data and suggestions from the members of the N.Y.S. Coalition and its sixty affiliated organizations.

Much of the statistical data we relied on in this report came from the research departments of the state's criminal justice agencies. In one instance, the matter of time allowance committee decisions concerning the restoration of good time, we undertook a special research project. The story of that project and our findings can be found in Appendix C.

PART I: A Legal Analysis:

GOOD TIME IN NEW YORK:

How it got that way.

Prior to examining the problems that beset the current system for awarding good behavior credits in New York, it is necessary to understand both how the current system works and the legal basis of that system. The present good time law was the product of the law revision commission which produced the penal law which went into effect in 1967. Central to the story of the 1967 changes is the rationale for discontinuing the awarding of good time against the minimum sentence.

How the Present System Works

One way to explain good time is by using an example. Take, for instance, the case of a first offender who has been convicted of robbery in the first degree, a Class B felony. Because Robbery-1 was defined in 1978 as a violent felony offense, the judge must sentence this defendant to a prison term of an indeterminate length according

to a formula set forth in the state's Penal Law. The maximum term of this sentence must be at least 6 years, although it could be as long as 25 years. For the sake of numerical convenience, let's say the judge sets the maximum at 18 years. The minimum term of the sentence must then be set at 6 years -- one-third of the maximum, a ratio fixed by the violent felony offender statute. A second felony offender would receive a minimum of one-half of the maximum.

Under the current laws, this person will spend six years in a state correctional facility (minus any time spent in jail before and after the sentencing took place) before meeting the Parole Board for release consideration. If parole release is denied, the offender may be held in prison until the conditional release date is met. In this example, the "CR" date would be 12 years -- the maximum minus one-third, which is the largest amount of time that can be given for good behavior and performance of duties in work or program assignments according to section 803 of the Correction Law and section 70.30 of the Penal Law. This one-third reduction of the maximum is what is commonly known as Good Time.

If the inmate has not been paroled, release after twelve years is automatic if no good time has been lost. Good time can be taken away or forfeited at a Superintendent's Proceeding for violation of specified prison rules, but it can also be restored totally or in part by the facility's Time Allowance Committee which reviews the inmate's entire record four months prior to the CR date. Each year for the past ten years approximately 2,000 persons have been held to their conditional release dates while an average of approximately 5,000 persons were released on parole.

Good time only applies to persons with fixed maximum terms. Thus a person who has been sentenced to a maximum of life does not receive good time, nor does good time affect the person's minimum term, the number of years that must be completed in prison before first parole eligibility. In the above example, the Parole Board first sees the inmate at six years and has six years in which to exercise jurisdiction to release the prisoner to parole supervision.

The unavailability of good time for lifers and the application of good time to the maximum term only, are the result of legislation that

went into effect in 1967. Prior to that year -- and indeed for most of the twentieth century -- all inmates were eligible to receive good time credits and those serving indeterminate sentences received credits against their minimum terms. (See Appendix A)

The method of applying good time to a sentence has been changed several times over the past century and a half, but that is not surprising since the sentencing structure as a whole has also been altered frequently. Most of the changes in good time in fact are linked to changes in sentencing. At certain times, when the good time system appeared out of phase with general sentencing practices, the need for revision became apparent. Such was the case in 1935 when the Law Revision Commission was given the task of simplifying the state's good time system and such was the case in 1981 when the Coalition undertook this study as a response to the absence of change despite numerous calls for action over a period of years.[1]

The present situation ressembles the 1930s with the positions reversed. In the 'thirties, good time had become difficult to administer because prisoners were receiving time allowances for ostensibly different reasons at different rates depending on the date of the crime. It became necessary at that point to adjust the good time system to the sentencing structure that assigned indeterminate sentences to all but a small number of felony cases. At present, the good time system is relatively simple, but the sentencing system has become complex and contradictory. Since 1967 the authority for setting the minimum term of the sentence for most cases has been transfered from the Parole Board back to the courts. In addition, mandatory incarceration and mandatory minimum terms have been legislated for most major felony offenses. (See Appendix B) One result of these and other amendments to the Penal Law has been longer prison terms and a greater number of persons under custody than was the case ten to fifteen years ago. (See Tables I and II)

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1. Law Revision Commission, Recommendations and Study Made in Relation to Section 230 of the Correction Law, Legislative Document 60(I), 158th session of the N.Y.S. Legislature (1935).

The relationship of good time reform to these larger sentencing issues will be examined in the course of discussing specific steps to change the current system in Parts III and IV of this report. Before discussing possible solutions, however, it is necessary to consider the rationale presented fifteen years ago when the legislature eliminated good time off the minimum of an indeterminate sentence.

Why Good Time Off the Minimum Was Eliminated

A good time allowance taken from the minimum term of an indeterminate sentence was available in New York prior to 1967. Good Time off the minimum dates from the late 19th century and remained in effect until 1967 with brief interruptions from 1903 to 1916 and from 1925 to 1931.[2] From 1935 to 1967, the reduction of the minimum was available to inmates at a rate of one-third. In 1967, when good time off the minimum was deleted from the law as part of the overhaul of the entire penal law, two arguments were advanced to justify that decision:

1. To allow an inmate to reduce the minimum term below the time set by the judge or the Parole Board, it was argued, was "incongruous" since the inmate, while serving the minimum, was already working for parole release.[3]

2. The revised sentence lengths in the new penal code already incorporated the good time reduction: "The fifteen to twenty five range for a class A felony is approximately the same as the former minimum for murder [after deduction for good time]."[4]

According to McKinney's commentaries, good time off the minimum is incongruous since the purpose of good time is to encourage good behavior and this is already accomplished by the parole system which can penalize poor institutional adjustment by denying parole release. While it is true that the possibility of release on parole is still an induce-

2. Law Revision Commission, 1935, op cit, passim. See also LI886, c. 21; LI903, c. 137; LI912, c. 79; LI916, c. 358.

3. N.Y. Penal Law § 70.30 (McJubbet 1975) Hechtman commentary.

4. N.Y. Penal Law § 70.00 (McKinney 1975) Hechtman commentary.

ment to good behavior, that inducement has been seriously diminished.

After the introduction of the unspecified minimum sentence in 1967, the Parole Board set minima for the majority of persons sentenced to state prison.[5] Under that arrangement the minimum term was set during the tenth month, and since the inmate was subject to a vital decision soon after arriving in custody, the inducement to a good adjustment was real and immediate. The authority of the Parole Board to adjust the minimum at subsequent hearings or to adjust the initial determination on appeal maximized the influence of parole on inmate behavior.

Beginning in 1967, except for A felony sentences, the lowest minimum which could be set for all felonies was one year. The highest minimum that could be set by the courts was one-third of the maximum, while the Parole Board could set it as high as one-half on an unspecified minimum. The second felony offender statute was not passed until 1973 and the persistent felony offender provision was discretionary. Minimum sentences of thirty, forty and even sixty years had been eliminated. Therefore, the promise of parole to the vast majority of persons sentenced under the 1967 penal law was not a distant one, but a matter of ongoing concern directly contingent on good behavior.

As a result of amendments to the 1967 penal law, the unspecified minima have been replaced by court-set minima (1980) and minima of one-third to one-half the maximum are now mandated in a large percentage of cases that require incarceration.[6] For example, the lowest minimum for "violent felonies" is one-third of the maximum; for "armed felony offenses" the minimum, even for a first offender, can be one-half of the minimum sentence. The minimum must be one-half the maxi-

5. See "Characteristics of New Commitments 1974", Vol. X, No. 1, DOCS, pp. 10, 14. Prior to 1974 and the impact of the "Rockefeller" drug and second felony offender statutes fewer than 10 percent of the incoming population had court-specified minima.

6. "1980 New Commitments by Violent and Second Felonies/Preliminary Data", DOCS. More than 71% of the 1980 new commitments arrived either as violent felony offenders or second felony offenders. Of this group, most would be subject to minima of either one-third or one-half of the maximum. The major exception would be those whose maximum sentences are life.

mum for all "second felony offenders"; for "persistent felony offenders" the minimum is calculated as if for A-I felonies -- i.e., fifteen to twenty five years; and for "persistent violent felony offenders" the maximum is life and the minimum range exceeds second felony minima in each felony class. In addition to these specified minima, minimum terms no longer merge where consecutive sentences are imposed; rather they are now added together as was the case prior to 1967.

The minimum has become a hard and fast term of imprisonment rather than a period of confinement of unspecified length subject to the jurisdiction and discretion of the Parole Board. Minima are becoming increasingly remote for more and more inmates[7] and as a consequence, parole as an inducement to good behavior is considerably less efficacious than under the sentencing format originally constructed in 1967.

The argument that there is no need for good time against the minimum to encourage good behavior "because while the prisoner is serving his minimum he is working for parole" has much less substance in 1982 than it did in 1967.

Objection #2 -- Sentences Are Shorter

A second justification set forth in the penal law commentaries for eliminating good time from the minimum is that the minimum ranges of the 1967 penal law are roughly equivalent to the minimum ranges of the 1909 penal law less the one-third good time reduction. The example given is a comparison of the sentences for murder under the old and new law. Yet a comparison of sentences authorized before the 1967 penal law went into effect with those new authorized as a result of the amendments that went into effect in 1974, 1978 and 1980 indicates that for many crimes the current sentencing law is as severe as, if not more severe than, the pre-1967 statute.

7. See "The Prison Population Explosion in New York State", Correctional Association of New York, March 1982, table 11: "Length of Minimum Sentence of New Commitments", which shows an increase in the percentage of minima of 31 months or more from 6% in 1973 to 31% in 1981. See also Table 3 in this report which demonstrates that a greater percentage of persons are being sent to state prison currently with minima above five years than was the case in the years immediately prior to the adoption of the 1967 penal law

For example, under the 1909 penal law, Assault 2nd degree (1909 P.L. § 242) had a minimum range for first offenders of 1 to 2½ years. After subtracting one-third for good time, the highest minimum was one year, eight months. Currently, the highest minimum authorized for Assault 2nd, a D felony is two years, four months.

Possession of a dangerous weapon in the 2nd degree (1909 P.L. § 1897) had a minimum range of 1 to 3½ years. After subtracting one-third good time, the highest minimum was two years, four months. The current minimum range for this crime (P.L. § 265.03), a C felony, is two years, three months to 7½ years. (See Chart A)

Furthermore, under the 1909 penal law there was no mandatory imprisonment for any class of crimes except for persons sentenced to death, or to life imprisonment, or those who were convicted of being armed during commission of a felony (1909 P.L. § 2188). Presently, imprisonment is mandatory for many classes of offenses[8] and there are undoubtedly many persons now serving prison sentences for crimes which would not have resulted in incarceration either prior to 1967 or immediately after the adoption of the 1967 penal law.[9] Thus it appears that the present sentencing system is harsher in many instances than the

8. Imprisonment is mandatory for all violent felony offenses, for all second and persistent felony convictions, for all A felonies, for all non violent B felonies except in the case of drug offenders who receive lifetime parole in return for material assistance in connection with a drug felony (P.L. §§ 60.05 (3), 65.00 (1)(b), 65.00 (3)(a)(ii), for 8 classes of not violent C felonies and for 1 not violent D felony.

9. On February 3, 1982 there were 25,870 persons incarcerated in New York State Prisons. DOCS provided crime of commitment data on 21,057 of the total. Of that group, 1,907 (9%) were serving sentences as second felony offenders for D and E felony offenses for which probationary sentences were allowable prior to 1973.

In addition, to the second felony group there are persons currently serving time as violent felony offenders for criminal behavior that prior to 1978 often resulted in probationary sentences as a result of plea bargaining. Plea bargaining restrictions have contributed to the increase in incarceration rate in New York in the late 1970's. See "Semi-Annual Report on Violent Felony and Juvenile Offenses in New York State", February 1, 1981 and August, 1981, Division of Criminal Justice Services: VFO Impact Analysis.

one in effect prior to 1967 when inmates could receive a good time reduction of their minimum term.

CHART A

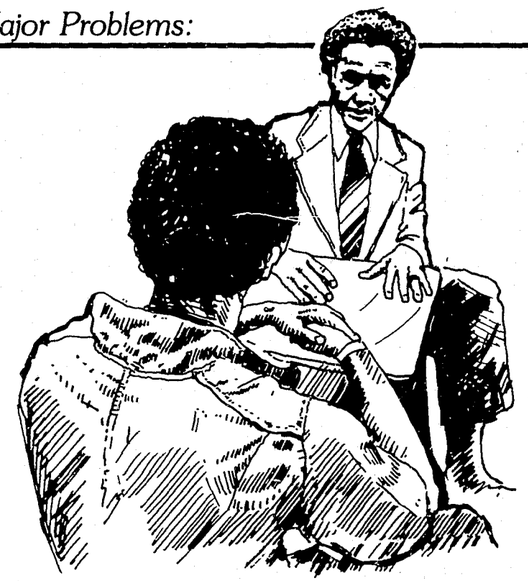
The Highest Minimum Authorized for First Offenders

A Comparison of Pre-1967 and Current Penal Laws

	old law	new law
Assault 2nd	1 yr, 8 mos	2 yrs, 4 mos
Possession, dangerous weapon	2 yrs, 3 mos	7 yrs, 6 mos

The rationale for eliminating good time from the minimum may have had some bearing in 1967. Since then, however, amendments to the penal law have nullified both objections. These amendments have resulted in circumstances that make adoption of a good time reduction of the minimum once again a sound correctional policy. In the next section of this report, we will examine conditions and problems that are part of the current good time system.

PART II: Four Major Problems:



What's WRONG with New York's Good Time System?

In the course of polling inmates, correctional employees and others familiar with New York's good time system, a number of complaints and problems were repeated again and again. These fell into four categories or aspects of good time, each of which was carefully examined. The major complaints about good time identified four areas of concern: 1. who is eligible to receive it, 2. the system of taking good time for disciplinary violations, 3. the relation of good time to parole release decisions, and 4. the value of good time as a reward. In this section we will review each of the complaints and indicate how each bears on the need for good time reform.

Who Is Eligible To Receive Good Time?

Community Awareness Committee of the Logan Jaycees, Auburn Correctional Facility:

"Under present law, 'good time' is not awarded to prisoners who are serving sentences with a maximum of life imprisonment. Life-term prisoners are denied the benefit of 'good time,' as well as the benefit of becoming eligible for 'conditional release.'"

James Q. Wilson, professor of government at Harvard, author of "Thinking About Crime," and member of the Attorney General's Task Force on Violent Crime on sentence lengths:

"Some prisoners are serving sentences far longer than can be justified by considerations of crime prevention or simple justice. If we shorten very long terms by, say 10 percent, . . .we lose little in terms of deterrence or incapacitation but the gains to the system in terms of lessened overcrowding may be significant."

The State of New York Correction Law states: "Every person confined in an institution under the jurisdiction of the department /of Correctional Services/ or a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment, except a person serving a sentence with a maximum of life imprisonment, may receive time allowances against the maximum of his sentence not to exceed in the aggregate one-third of the term imposed by the court."[1]

Should persons with life maximums be denied good time? Prior to 1967 "lifers" were allowed to earn good time against the minimum term.[2] When good time off the minimum was eliminated in 1967, lifers were made ineligible. With around 12 percent of the under custody population

1. C.L. § 803 (1). Good behavior allowances are also applicable to the sentences of persons confined on a definite sentence of imprisonment at a rate of one-third of the term imposed by the court. C.L. § 804.

2. In 1962, the Legislature authorized good time allowances against the minimum terms of those entering prison with indeterminate sentences with a maximum of life, except in cases when the sentence was one day to life. L.1962, c. 826.

facing maximum sentences of life, a major complaint of inmates and many employees as well has been the ineligibility of lifers to earn good time.[3]

As a result of penal law revisions in the 1970s, New York imposes life sentences on a greater percentage of persons than any other state in the nation.[4] In addition to murder and a few other crimes which have traditionally carried life sentences, New York has two categories of drug offenses and two categories of repeat offenses that carry life terms.[5] Consequently in 1982 there are approximately 3,000 persons

3. In a survey of correctional employees conducted by the Coalition, respondents were asked which inmates should be eligible if the state were to restore good time off the minimum. Forty-nine percent of the employees stated that all inmates should be eligible and an additional 12% would apply it solely to lifers.

4. Corrections Compendium, Vol, V, No. 10 (April, 1981), pp. 1-5.

5. See P.L. § 70.08: persistent violent felony offender statute; P.L. § 70.10: persistent felony offender statute (which is a discretionary designation). Consult P.L. article 220.00 for statutory designations of controlled substances and P.L. § 70.00 (2)(a) for life penalty for A-I or A-II drug convictions. Prior to passage of L.1979, c. 410, there was an A-III drug offense category that carried a maximum of life. Chapter 410 permitted persons previously convicted and sentenced under the A-III provision to have their sentences commuted to B felony sentences. As of 3 February 1982, there were 479 persons under DOCS custody whose felony classification at commitment was A-III. DOCS was unable to ascertain how many of those persons have not been re-sentenced or had their sentences commuted by the governor.

doing life in New York, two-thirds of whom have minimum sentences in excess of fifteen years.[6]

Controlling the behavior of persons sentenced to life terms can be a problem for prison authorities since lifers are not subject to a good time reduction and therefore cannot be threatened with its loss. An inmate with a short sentence knows that even if he is not paroled he will get out once he has completed two-thirds of his maximum. Therefore the short-termer will respond in most cases to the threat of losing good time. The lifer, particularly if he is many years removed from his first parole release hearing, faces no equivalent threat.

6. As of 1 September 1981 there were 1,997 inmates with minimums of fifteen or more with maximums of life. The following chart indicates the lengths of the minimum terms of those 1,997 persons.

CHART B

MINIMUM TERMS OF 1,997 PERSONS WITH MAXIMUMS OF LIFE AND MINIMUMS OF 15 YEARS OR MORE

Years	Persons	Years	Persons	Years	Persons	Years	Persons
15	817	19	1	23	7	36	1
16	2	20	238	24	1	40	5
17	10	20.9	1	25	689	42.6	1
17.6	7	21	8	25.9	1	50	1
18	34	22	10	30	5	55	1
18.6	1	22.6	2	35	1	60	2
						70	1

The following chart indicates the crime of conviction for these 1,997 persons:

CHART C

CRIME OF CONVICTION OF 1,997 PERSONS WITH MAXIMUMS OF LIFE AND MINIMUMS OF 15 YEARS OR MORE

Murder	1,648	Assault	4
Drugs	239	Burglary	3
Kidnapping	40	Grand Larceny	2
Robbery	27	Crim. Poss. Stolen Property	2
Manslaughter	13	Forgery	1
Rape	10	Sexual Abuse	1
Dangerous Weapons	6	Conspiracy	1

Source: Department of Correctional Services, Office of Program Planning, Evaluation and Research.

Because long-termers tend to adjust themselves fairly well to the prison routine, the need for the threat of good time loss may be less pressing for these inmates than for short-termers. However, in addition to those instances when the authority to defer a long-termer's parole hearing date would prove useful for disciplinary purposes, the possibility of gaining an earlier hearing via good time would encourage lifers to maintain family ties, use their time constructively and plan for an eventual return to society.[7]

Taking Away and Restoring Good Time

Community Awareness Committee of the Logan Jaycees, Auburn Correctional Facility:

"There are many men and women in the prisons of New York State who are serving sentences with very long minimum and maximum terms without any benefit of positive or realistic incentives. To allow these men and women to earn "good time" off the minimum term of their sentence for good behavior, for a good work record, and for participation in educational and other constructive programs would provide a potential benefit for them, for the Department of Correctional Services, and most significantly, for society."

Over the years two methods of crediting time allowance credits have been devised. Under those systems that involve earned good time, the prisoner begins his sentence with zero time credit. Periodically his performance is evaluated and he receives credit, generally at a predetermined rate. This method may involve "vesting" time as it is earned with a "time out" period of a specified length if the inmate has been judged in violation of a major institutional regulation.[8]

7. See Timothy J. Flanagan, "Long Term Prisoners: A Study of the Characteristics, Institutional Experience and Perspectives of Long-term Inmates in the Correctional Facilities, " SUNY at Albany, 1979 for an insightful analysis of the special problems and needs of long-termers.

8. Several states now have some form of vesting. For references to how vesting works in California, Idaho, Colorado and Minnesota, see James Jacobs, "Sentencing by Prison Personnel," pp. 18-19, 25-26, 51.

New York typifies the second method of awarding good time: Inmates in New York receive the maximum amount of time they are able to receive on their particular sentences automatically at the beginning of the sentence. Time is only taken away if serious violations occur. An inmate's time allowance credit results in the setting of a conditional release date at two-thirds of the maximum sentence. Subsequently time can be taken away at a superintendent's hearing for the violation of any of a list of specific rules and regulations,[9] although any time assessed at this point does not become final unless and until the inmate reaches the conditional release date.

At each prison, a time allowance committee, consisting of three persons designated by the superintendent, is required to conduct an interim review for each inmate once every three years and a conditional release hearing "on the fourth month of the earliest possible date /the inmate/ would be entitled to /parole/ consideration...."[10]

During classification inmates are given the rule book that indicates what penalties may be assessed for what specific violations. There are no firm quidelines for how much time may be taken for a particular offense nor for what factors contribute to getting forfeited time restored.[11] As a result of this lack of clearly defined standards for taking and restoring time, what should be extraordinary occurrences take place all too regularly. These include a prisoner's losing more time than he is entitled to earn and lifers being assessed good time "just in case good time off the minimum is restored". Inmates reported considerable disparity not only between facilities, but within them as

9. N.Y. ADMIN. CODE tit. 7 Chapter V.

10. N.Y. ADMIN. CODE tit. 7 § 261.3 (1970)

11. This description is based on what is supposed to take place. We heard testimony that inmates don't always get copies of the rule book, that interim (or triennial) review hearings are not held at some facilities, and that there are suggested guidelines for how much time might be taken for some of the violations. There is also the evidence from the fact of constant litigation by inmates over loss of good time that the system operates in an ad hoc fashion depending on the facility and personnel involved.

well.[12] For example, Bedford Hills Correctional Facility, the women's maximum security prison, is currently being monitored by a special master as the result of a court decision concerning disciplinary procedures.[13]

Although the practice of taking time varies considerably from facility to facility, until the inmate reaches conditional release the time taken only amounts to a "paper punishment".[14] If the inmate has not been paroled prior to that date, the actual change in the conditional release date depends on a decision by the time allowance committee which can restore some or all of the time taken at the superintendent's proceedings. In New York, the regulations of the Department of Correctional Services provide only general guidance concerning the

12. A number of factors contribute to unequal treatment in the disciplinary area. Timothy Flanagan found that long-termers are treated differently than short-termers in terms of the penalty attached to certain violations. Good time loss was more likely to be included in the penalties given to long-termers for such violations as creating a disturbance, refusal to obey an order, unauthorized assembly, fighting and possession of contraband. Short-termers were more likely to be punished with loss of privileges, confinement to cell or confinement to special housing for the same violations. See Flanagan, "Long Term Prisoners," p. 152 et supra.

13. In 1974, the U.S. Supreme Court ruled in Wolff v. McDonnell, 418 U.S. 539 (1974) that a prisoner faced with a potential loss of good time by prison authorities is entitled to minimum due process guarantees at a disciplinary hearing. Inmates at Bedford Hills Correctional Facility initiated and won a class action suit against the state of New York seeking compliance with Wolff v. McDonnell. See Powell v. Ward, 392 F. Supp. 628 (S.D.N.Y. 1975), aff'd 542 F.2d 101 (2d cir. 1976). That decision resulted in the appointment of a special master to oversee restoration of time lost as a result of improper procedures. Subsequently the Second Circuit tightened its initial decision as the result of a contempt proceedings to enforce compliance. See Powell v. Ward, 487 F. Supp. 917 (S.D.N.Y. 1980), aff'd 643 F. 2d 924 (2d cir. 1981). Nevertheless according to Elizabeth Koob, an attorney with Bronx Legal Services, a recent incident led to identical charges against a group of inmates at Bedford Hills. The penalties assessed varied considerably including losses of good time of from 30 to 90 days.

14. James B. Jacobs, "Sentencing By Prison Personnel: Good Time," unpublished paper, February, 1982, p. 36.

restoration decision.[15] This committee also has the authority to conduct a hearing to take additional time, although this is apparently not frequently exercised.[16]

Inmates claim that the decisions to take and restore time are biased in part because of the makeup of the committees and in part because of procedural limitations which inhibit their ability to make a credible case for themselves. Some people have called for outside or civilian or impartial hearing officers to make these important decisions. Inmates state that their files often lack information about positive program achievements and that only negative behavior (or the lack of it) are considered in decisions about restoring good time. While inmates claim that too little time is restored, correction officers report that too much time is given back.[17] Some inmates respond to their sense that the process is weighted against them by failing to appear at their time allowance committee hearing.

15. "The committee shall consider the entire file of the inmate and then shall decide upon a recommendation as to the amount of good behavior allowance to be granted...." N.Y. ADMIN. CODE tit. 7 § 261.3 (d) (1970)

"The committee shall not recommend the granting of the total allowance authorized by law or the withholding of any part of the allowance in accordance with any automatic rule, but shall appraise the entire institutional experience of the inmate and make its own determination." N.Y. ADMIN. CODE tit. 7 § 261.3 (e) (1970)

For a probe into what actually results from time allowance committee hearings, see Appendix C.

16. N.Y. ADMIN. CODE tit. 7 § 261.4 (1970). During a review of the TAC decisions over a period of months at several DOCS facilities, the Coalition came across one instance when a TAC took additional time at its own initiative.

17. See "Opinions of Prison Good Time," New York State Coalition for Criminal Justice, February, 1982.

It is clear that the absence of standards in the area of good time restoration is currently damaging staff morale and contributes to the lack of trust inmates feel about prison administration. One blatant example of how an absence of standards undermines respect for the process is the case of one officer who regularly sits in judgment as a member of the time allowance committee of decisions he has made at the superintendent's proceedings.[18]

Good Time and the Parole Board's Release Decision

Warren E. Burger, Chief Justice of the United States, on Good Time:

(An inmate who declines to cooperate must be motivated to do so by incentives, including shortening the sentence.)

"Just as good behavior credit is allowed to reduce sentences, we should allow credit on sentences for those who cooperate (with educational programs). We should help them to learn their way out of prison. Rewards and penalties accompany the lives of the cadets I spoke of—and of law students. Why should this not apply to prisoners?"

A major complaint levied at New York's sentencing system is that inmates face uncertain futures with little incentive to plan or prepare themselves for a life after incarceration. The basic reason for that uncertainty is the declining reliability of the minimum term of the sentence as a date that can be counted on for release from prison. It is important to note that in recent years the percentage of inmates released after serving their minimum term has declined, whether the

18. The issue of standards governing time taken and restored deserves further study by a number of objective bodies. We therefore urge the Governor's Executive Advisory Commission on the Administration of Justice, the Governor's Advisory Commission on Criminal Sanctions, the Commission of Correction, and three committees of the Legislature (Assembly and Senate Codes and Senate Crime and Correction) to investigate and issue recommendations. It goes without saying that any correctional practice that threatens to affect the length of an inmate's stay in prison for what are essentially noncriminal matters requires carefully developed standards and procedures and constant oversight.

minimum was set by the court or by the Parole Board. And although inmates with "board-set" minima are almost twice as likely to gain release at the minimum as are those with "court-set" minima, the percentage for both groups has been declining.[19]

In September, 1980 the authority to set the minimum sentence for all adult felons whose crimes were committed after that date was shifted from the Parole Board to the sentencing court. Since this law went into effect, the inmate who meets the Parole Board at his court-set minimum has considerably less than a fifty-fifty chance of being released at that date.[20]

Complicating the confusion caused by removing from the Parole Board the authority to set m.p.i.s (minimum periods of imprisonment), is the continued use of a guidelines system to make release decisions that is largely based on sentencing criteria.

Guidelines were developed in the late 1970s to standardize the factors that were to be considered when setting the minimum and to give the inmate a more accurate idea of how much time he would actually spend in prison.[21] Guidelines are currently used only in making release decisions for adult felons whose minimum was set by the court. The criteria which determine the range of months that each person's actual time in prison is evaluated by are the same criteria that the courts use in setting minima -- namely, the nature of the crime and the defendant's prior record.

What has been the result of this apparent duplication of sentencing authority? When the court rather than the Parole Board sets the minimum, the actual release date falls within the guidelines range in less

19. See "The Prison Population Explosion in New York State," Correctional Association of New York, March, 1982, p. 125 (Table 18). The rate of affirmative release decisions for persons with board-set minima declined from 65% in 1979 to 57% in the first five months of 1981, while the rate for court-set minima in the same period declined from 42% in 1979 to 28% in 1981.

20. Conversation with Barbara Broderick, Assistant Director of Evaluation and Planning, NYS Division of Parole, March 8, 1982.

21. See "An Overview of the Implementation of Parole Board Decision-Making Guidelines in New York State," Division of Parole, undated, pp. 1-2.

than fifty percent of the cases.[22] The Division of Parole's position is that the amount of time inmates are held in prison today based on the crime of conviction is not changing. However, many people are also spending from six months to a year in jail before transfer to state custody (inclusive of pretrial incarceration). The results of an apparently unofficial policy of requiring inmates to do as much state time as persons with less or little jail time has not only contributed to the decline in the certainty of the minimum but is also a contributing factor in the state's overcrowding crisis.

The Division of Parole also points out that as many as one-third of the actual release dates fall below the grid range. Regardless of where the dates fall with respect to the grid, inmates today cannot predict a likely date when they will be released from prison either on a minimum set by the court or on the guidelines system. Denying inmates this crucial piece of information threatens the stability of the entire system. Uncertainty coupled with overcrowding are major factors that contribute to frustration, violence, decline in staff morale, and loss of public confidence.

22. Conversation with Barbara Broderick, NYS Division of Parole, March 8, 1982.

The Worth of Good Time as a Reward

Community Awareness Committee of the Logan Jaycees, Auburn Correctional Facility:

"It should be noted that what is called 'good time' under present law is not really 'good time' at all. It is loaned time which, in effect, is useless to most prisoners."

Associate Attorney General Rudolph Giuliani on rehabilitation:

"I hate to use the word 'rehabilitation' because both the left and the right are convinced it can't work, but I don't think that's so."

"I don't think we've ever tried it, at least in a sensible way. It's not a sensible rehabilitation policy to send the Salvation Army into Sing Sing prison to sing to the inmates, to teach prisoners to make license plates when only prisoners make them, and not to teach a functionally illiterate group of offenders how to read and write."

Inmates perceive good time as a correctional practice that was designed to offer a reward for adherence to prison regulations and for participation in program.[23] A major complaint about New York's good time system is that the reward is beneficial to only about a quarter of the prison population. Inmates point to the fact that most people are released on parole and therefore never see the benefit of their good time. In the past decade around 60% were released annually on parole

23. Actually, good time allowances "may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned." C.L. § 803 (1).

and 21% were released as conditional releasees.[24] (see Table 1)

Inmates also point out that the person who does not get in trouble, but does nothing to change or better himself, gets the same amount of good time as the person who does become involved in programs and handles his job assignment responsibly.[25]

Employees share the inmates' complaint that the current system does not provide sufficient incentive for participation in educational and vocational training programs. In the Coalition's survey of correctional employee opinion, all three groups surveyed -- administrators, correction officers and program staff -- concurred that a good time system should provide more of an incentive than the current system does.

CHART D

EDUCATIONAL INCENTIVE

	Current system provides it	Good time should provide it
Inmates	55.3%	80.0%
Employees		
Administrators	56.2	84.0
Uniformed	50.0	73.6
Service/program	35.4	70.6

Source: "Opinions of Prison Good Time," NYSCCJ, February, 1982, p. 8.

Once paroled, the prisoner's good time is disregarded. The length of time owed on the sentence while under supervision of the Division of

24. "Monthly Analysis of Admissions and Releases," DOCS, December, 1981. In 1981, 56% were released on parole, 7% completed their maximum sentences, and 8% were released by sentence reversal, death, transfer to another jurisdiction or some other reason. The majority of those who were held to conditional release are persons with short maximum sentences. In 1980, 74% of the CRs had maximum terms of three or four years.

25. The Community Awareness Committee of the Logan Jaycees at Auburn Correctional Facility incorporated this observation in a skit written by inmate Theo Harris. The skit was produced and recorded by Syracuse public television station WCNY as part of a program on good time.

Parole is not affected by the time allowance credits acquired prior to parole release. There is no good time system while under parole supervision, and although there is the possibility of being discharged from supervision after three years, discharge is not based on a contractual arrangement that either presumes release after three years or allows the parolee to earn discharge.

If the offender is returned to prison as a technical parole violator, the good time credited toward the original conditional release date does not remain in effect. A new clock is started with a new conditional release date set at two-thirds of the time remaining on the maximum sentence. If the amount of time owed is less than one year, no good time is given. The conditional releasee is treated like the parolee, losing all good time credits if returned on a technical violation.

Inmates call this system "loaned time" and they argue that it means that New York does not offer true good time. Part of the confusion may result from the fact that good time operates differently for persons serving definite sentences in a county jail or penitentiary. After having been released on the basis of jail good time credits, there is no parole supervision -- the sentence has been reduced by the good time earned while incarcerated. Therefore, one version of what good time should be, according to many inmates, is a system where there is an actual sentence reduction of the maximum sentence leading to release without supervision.

Each of the areas discussed above -- who gets good time, how it is awarded and taken away, its relation to parole release and parole supervision -- touches on a number of issues and problems, some more significant than others, that are pervasive in New York's good time system. How people have attempted to solve those problems in recent years and what can be recommended today are the topics of the next part of this report.

PART III: A Tour Through The Proposals:

EARNED GOOD TIME: A Realistic, Achievable Solution.

Knowledge of the problems, inequities and ambiguities in the current good time policies in New York is widespread. Inmate groups have called for change since the early 1970's and various state officials, including three commissioners of the Department of Correctional Services, have sought an administratively feasible and politically viable reform model. Outside organizations, academics and the Legislature have examined, debated and reacted to various proposals.

This section on solutions begins with a review of some of the proposals that have appeared to date. Our purpose in this review is twofold. We believe the history of change efforts is important in its own right, since in this case at least, it reminds us that many people have seen the need for change. Second, these proposals provide a variety of options from which to choose the particulars for a revised system and

they indicate that lack of knowledge is not what is preventing the change.

After examining and evaluating the existing proposals, the choice comes back to the matter of purpose. What is it that we want to accomplish by good time? A discussion of the purposes of good time may prove useful to those who are not yet certain in which direction reform should go.

Once agreement is reached on purpose, choices are narrowed and alternatives can be evaluated and sorted out until one plan emerges. Not all issues must be resolved in advance. Some require legislation; others, administrative changes. Some issues require further study; others can be settled in setting up procedures and policies. Collateral issues, such as the quality of educational programming, the treatment of persons suffering from mental illness or other disabilities, and the standards applied to taking good time for disciplinary purposes, will come into focus once the primary issues are resolved. These can then move up on the agenda for future consideration.

Inmate Reform Proposals

The feeling that no good time exists in New York has been expressed by inmates dating at least from Attica.[1] The demand for reform of the good time law became a standard item on inmate grievance lists in the 1970's. In 1976, the Commissioner of the Department of Correctional Services, Benjamin Ward, asked inmates to identify legislative priorities and develop their own proposals for change. Good time was chosen by several organizations and a number of proposals were generated.

Since that time, inmate organizations have held workshops and seminars with outside guests, including legislators and other state officials,

1. Attica: The Official Report of the New York State Special Commission on Attica. N.Y.: 1972, p. 93.

to discuss and promote good time reform. One of the first groups to develop a good time proposal was the Creative Communications Committee at Green Haven.[2]

Around the same time that the CCC was putting together their proposal, members of the Logan Jaycees at Auburn Correctional Facility organized a Community Awareness Committee and began to work on a good time proposal. The latest version of the CAC plan is contained in a 35-page document that provides historical background information, spells out the "economic implications" of long-term incarceration, and details in seven sections an earned good time system. The Auburn plan, which would allow one-third off the minimum and maximum, encompasses all the facets of good time policy from the moment the inmate is oriented to the prison world until completion of the sentence.

A third proposal, varying somewhat from the other models, was developed at Bedford Hills Correctional Facility by a coalition of inmate organizations. The Bedford Hills' "Merit Time" plan would allow inmates to earn a two-thirds reduction of their minimum sentence for an extraordinary rating in program and work activities while providing a one-half reduction for those who achieve a satisfactory evaluation. Time would be credited four times a year under this model and would be vested.

Good time has been raised as an issue by inmates, but it is not solely an inmate issue. Paralleling the work done by inmates has been the development of proposals by various state officials and governmental bodies.

2. Two members of that organization later designed a plan specifically aimed at inmates with minima over ten years. "Equity Parole Review", as the plan was labeled, would allow these persons to see the Parole Board at ten years for possible parole release. A major selling point of this concept is the fact that the federal prison system contains such a provision. Current versions of this proposal are being championed by the Jaycees chapters at Eastern and Green Haven.

System Reform Proposals

Governor Hugh Carey's program bill memorandum in 1977 in favor of good time off the minimum:

"As the law presently stands, good time is credited only against the maximum term. Since the great majority of inmates are paroled prior to serving two-thirds of the maximum term, the present law provides virtually no incentive for good behavior by inmates."

"The bill would have a positive impact on the morale of individual inmates, who would be able to have a direct effect on their parole eligibility by earning good behavior credits. The bill would also have a positive impact on prison discipline, since loss of good time allowances for behavioral infractions would delay the inmate's parole eligibility."

Soon after taking office in 1975, Hugh Carey became concerned with crime and correction policy. Good time was discussed as a possible reform by the members of Carey's unofficial criminal justice cabinet as one ingredient in their efforts to avoid a repetition of the Attica uprising in 1971.[3] Good time had been called to their attention through the newly installed grievance mechanism. Upon further study, Carey's staff determined that good time was relatively ineffective as an incentive to good behavior and they convinced Carey that the state should reciprocate if inmates lived up to their end of the bargain and behaved themselves. They concluded that time off the front end of the sentence would serve that function and in the spring of 1977, Carey submitted a program bill to the Legislature that would have allowed a one-third reduction of the minimum sentence for good time.

The basis for this proposal, according to the bill memorandum, was the recognition that "the present law provides virtually no incentive for good behavior by inmates.../since/ the great majority of inmates are

3. This section is based on a conversation with Clarence J. Sundram, former counsel to the governor, that took place June 9, 1981.

paroled prior to serving two-thirds of the maximum term." The memorandum went on to claim that this "bill would have a positive impact on the morale of individual inmates, who would be able to have a direct impact on their parole eligibility by earning good behavior credits," and that the bill "would also have a positive impact on prison discipline, since the loss of time time allowances for behavioral infractions would delay the inmate's parole eligibility."[4]

The tide to tougher laws was well under way in New York by this date and Carey's bill died in committees, and a Codes Committee bill to take good time off the minimum for inmates with minimum sentences of 15 years and up (A.6483) died on the Assembly calendar. The issue was not dead, however, in the Department of Correctional Services.

In the summer of 1977, reacting to the failure of the legislature to take action, Commissioner Ward appointed a task force within his department to develop an "Incentive Good Time Bill" that would "reward hard work and real program participation."[5] The DOCS task force considered all aspects of implementing good time off the minimum -- down to the details of record keeping.[6] By November, Task Force Chairman Arthur Leonardo reported that the task force had reached agreement on a plan that would institute earned as a replacement for automatic good time.[7] Earned good time would reward work, good behavior and cooperation. "It provides an honest incentive," Leonardo stated, "and is also an effective disciplinary tool." "'Earned Good Time' gives us a positive tool to reward with," Leonardo wrote, "rather than to always have to resort to punishment." The task force called for retaining the reduction

4. Memorandum to 1977 Program Bill #60 - A.7983/S.6256

5. Memorandum from Commissioner Ward, dated 9/7/77. Italics in original.

6. Serving on the task force were superintendents Philip Coombe, Robert Henderson, and William Quick, deputy superintendent Everett Jones, senior counselor Jean Beaubriand, guidance specialist Richard Ratajak, and research assistant Leonard Morganbesser. Arthur Leonardo, director of special housing programs, served as chairman of the task force.

7. In a letter to Deputy Commissioner William Ciuros, Jr., November 30, 1977.

of the maximum at one day for every two days served and introducing good time off the minimum at a rate of one day for every three served.[8]

At the time of the DOCS task force report in early 1978 there was talk of New York's adopting definite sentencing. Under definite sentencing, good time attains greater significance since it becomes the major post-sentencing factor determining the actual length of time a person spends in prison.[9] According to Leonardo, who had chaired the DOCS task force, Commissioner Ward was disappointed with the task force proposal because he favored eliminating the Parole Board and their proposal allowed the board to deny release, even after an inmate had earned good time.[10]

In recent years, DOCS has continued to request passage of good time off the minimum legislation. However, after failing to gain support in 1977, Governor Carey has not gone back to the Legislature with this measure. Thus a change that was supported up and down the line seemed lost in limbo.

At his confirmation hearing in late summer 1979, the current commissioner, Thomas Coughlin, endorsed good time off the minimum, although with reservations. He has continued to support the concept, even indicating in February at a joint legislative hearing that he would campaign for it this spring. In 1981, Coughlin authorized participation of DOCS staff in discussions on good time with representatives of the Division of Parole and N.Y.S. Coalition for Criminal Justice.[11]

8. Ibid. The task force studied good time in Georgia, Texas and California. Later the Department issued two reports comparing New York to other states: "Good Time Systems of Various States and Projected Impact of Revisions of New York State System," June, 1979 and "Analysis of Impact on Department's Inmate Population of Enactment of Good Time Systems Modelled After Indiana and California Models," November, 1979. Benjamin Ward resigned as commissioner in 1978. He was replaced by Richard Hongisto on a temporary appointment. Then in the fall of 1979, after Hongisto stepped aside, Thomas Coughlin was appointed and confirmed as commissioner.

9. See James Jacobs, "Sentencing By Prison Personnel," 1982.

10. Based on a conversation with Arthur Leonardo, June 19, 1981.

11. These discussions, which were aimed at clarifying issues, obtaining data on current population, and identifying areas of agreement and disagreement, are still in progress.

The history of good time reform suggests two significant lessons: First, reform is not just an inmate issue but has been sought by those people most intimately involved in the day to day administration of the prison system.[12] Second, reform has not been held back for want of knowledge and ideas on how to implement an earned good time system which deducts time from the minimum sentence.

There has been an absence of public support of this issue, largely we believe because the public is generally uninformed about the workings of the criminal justice system. An understanding leading to the decision of whether or not to support reform must begin with purpose -- what is it that good time accomplishes in prison?

A Question of Purpose?

Historically, good time has served multiple purposes in New York and elsewhere. It has been used as a release mechanism in the absense of parole, as a devise to mitigate harsh sentences, as a means to deal with overcrowding, and as a method to encourage inmates to participate in work details and rehabilitative programs. Superintendents and guards indicate that it has been valuable to them as part of their need to maintain discipline and order. Many of these employees believe that the threat of the loss of good time does have a deterrent effect on most inmates and that those who have been assessed part of their time, may change their behavior in an effort to recover it.[13]

New York however, cannot be given high marks on realizing any of the above purposes with its current system. While the threat of lost time may act as a deterrent for some, its effectiveness in that area is limited since most inmates are released by the Parole Board prior to

12. This observation is borne out by the Coalition's survey of employee attitudes toward good time. Correction officers stationed at maximum security prisons tended to favor good time off the minimum more than those assigned to medium security facilities. Employees, including superintendents, guards and program staff, with several years' experience also were more likely to favor this proposal than employees with little seniority. See "Opinions of Prison Good Time," N.Y.S.C.C.J., February, 1982, pp. 3-6.

13. "Opinions of Prison Good Time," N.Y.S.C.C.J.

having completed two-thirds of their maximum sentence. Good time loss under that system is also what Professor Jacobs calls a "paper punishment" -- i.e., one that is not felt immediately and is therefore less likely to influence behavior than such penalties as loss of privileges or confinement in special housing.[14]

While New York's good time system may once have functioned as a check on population growth by providing conditional release to an average 2,000 inmates each year, it has little capacity to impact on overcrowding of the proportions currently faced in New York. Nor is it effective in mitigating harsh sentences since only the maximum portion of the sentences is effected and lifers are ineligible. Finally, we have argued that the system is also deficient as an incentive for inmates to make efficient and constructive use of their time since the inmate who spends his days sweeping floors, playing cards and lifting weights will get the same credit in New York as the inmate who gets a bachelor's degree, serves on the inmate grievance committee, becomes an active member of a volunteer inmate organization and handles a responsible prison job.

Why Change New York's Good Time?

Good time should not be altered in New York simply to alleviate overcrowded conditions. While it will make a contribution not only to reducing population but also reducing tensions in the prisons, it can be justified on its own merits. It has a historical place as part of the disciplinary system of the prisons, but more importantly, it is needed as an incentive to participation in programs that can make a difference in the lives of those released from prison. Good time off the minimum is needed as well to justify a presumption of release from prison at the earliest possible date for the majority of inmates.

A major goal of allowing a reduction in the minimum sentence on the basis of earned good time is to enable the Parole Board to release individuals who do not need to be kept in prison. The citizens of New York, we believe, will support such a plan if they have reasonable assurance

14. Jacobs, "Sentencing By Prison Personnel," 1982, p. 36.

that inmates are spending much of their time preparing themselves for gainful employment and for a constructive, crime-free lifestyle. It is also our belief that most persons who are sent to prison not only have the ambition of returning to society but will, if given the opportunity, take advantage of programs and activities that promise that life after incarceration can be very different for them as a result of what they do in prison.

Prison programs cannot create jobs for ex-offenders, they cannot guarantee family support and stability, they cannot provide needed services like inexpensive housing and good public transportation. Nor can they mandate changes in personality and attitude. Yet these programs can and do have an affect on some of the factors that determine success on the outside. That affect can be multiplied if the additional reward of an earlier parole release hearing is attached to participation.

A Good Time Proposal

The changes that would be required to initiate a good time system in New York that allows for an earlier release hearing and earlier release on parole would be authorization of good time off the minimum and revision of the criteria governing release decisions. We would add to the criteria that must be considered in making the release decision a line about earned good time and delete references to the nature of the crime and any prior criminal history.[15]

15. Section 259-i(2)(c) of the Executive Law might be re-written as follows: "Discretionary release on parole shall ~~not~~ be granted merely for good conduct and ~~or~~ efficient performance of duties while confined and ~~but~~ after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law ~~and that his release is not incompatible with the welfare of society and will not so depreeate the seriousness of his crime as to undermine respeet for law~~. In making the parole release decision, the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c shall require that only the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interpersonal relationships with staff and inmates, except that no inmate shall be denied release for lack of an institutional record if he has no opportunity to develop one; (ii) good time credits earned or lost; (iii) performance, if any, as a participant in tempor-

The rate at which persons could earn good time would be determined by considering past experience and the implications of setting amounts that would be too little to be effective or too much to gain public acceptance. The current rate of one-third off the maximum matches the rate by which good time came off the minimum from 1935 to 1967.

While a rate of one-third would provide a sufficient incentive for most inmates, it will not be adequate for those with extremely long minima -- twenty years and over. The Coalition recommends that coupled with good time off the minimum a ceiling be set at ten years, such that no inmate could serve a prison term for ten consecutive years without being considered for parole release. This corresponds to the "equity parole review" concept and is consistent with federal parole statute.[16] An inmate with a minimum over 15 years would receive an automatic review at 10 years and then be seen again, if not paroled at 10, at the date of his minimum minus earned good time.

The Governor's Advisory Commission on the Administration of Justice has asked for comments on the suggestion that good time off the minimum be instituted "except that no such sentence could be reduced below a floor of five years".[17] The Coalition recognizes that the major interest in instituting good time off the minimum is to do something for inmates

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ary release program; (iv) release plans including community resources, employment, education and training and support services available to the inmate; and (v) any deportation order . . .~~Notwithstanding the provisions of this section, in making the parole release decision for persons whose minimum period of imprisonment was not fixed pursuant to the provisions of subdivision one of this section, in addition to the factors listed in this paragraph the board shall consider the factors listed in paragraph (a) of subdivision one of this section.~~

16. Title 18 U.S.C. 4205 (a) (1976). Authorization for the Parole Board to see inmates for possible release on parole either on the basis of earned good time or on the basis of having served ten consecutive years on a minimum or aggregate term greater than ten years would require amending Executive Law § 259-i (2)(a).

17. "Report on Proposals Under Consideration to Address Prison Population Growth and Overcrowding," Executive Advisory Commission on the Administration of Justice, March, 1982, p. 10.

with long minimum sentences, many of whom might be parole release material years prior to completing the current legal limitation on parole release. Persons with short sentences (1 to 3 or 1½ to 4½) don't have much time to put together a record for Parole to evaluate. However, although the Executive Advisory Commission suggested a floor of five years, we prefer a good time system that would include all inmates with a floor of one year.[18]

The Department of Correctional Services should be able to develop and put in place within six months of passage of enabling legislation policies and procedures for an earned good time system. Much of the ground work has already been done by the DOCS 1977 task force and by inmates, whose proposals should be consulted. Part IV of this report offers additional suggestions and comments on various issues associated with an earned good time system.

A final recommendation for those who might consider supporting good time legislation would be the question of retroactivity. Without retroactivity, the impact of an earned good time system would be much less significant and it would not be felt in the system for several years. There is a substantial number of persons who have already completed two-thirds of their minimum terms who should be considered for parole release on the basis of the record they have completed while incarcerated. Some have attained college degrees; others have mastered new skills and attained basic literacy; others have been involved in religious, volunteer or treatment programs and would be excellent candidates for release. With retroactive awarding of the opportunity to earn good time off the minimum, the department could establish a review process for those inmates who would become immediately eligible for parole review.

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18. The argument in favor of establishing a floor above one year is that persons entering the system with minimums of one or two years are not only eligible for parole release soon after arrival, but also do not have enough time to establish an institutional record that Parole can rely on in making the release decision. An alternative method of awarding good time that takes this issue into account is one that awards time on a varied rate. For example, persons with one and two year minima might be allowed to earn one and a half months (45 days) per year; persons with minima of three or four might be allowed to earn two and a half months (75 days) per year; and persons with minima of five and over might be allowed to earn four months (120 days) per year.

PART IV: For Further Consideration:

How a Model System Would Work.

There are more than one hundred examples of good time systems that could be examined in search for the best model for New York. Some forty-four states and the federal prison system currently have some form of good time,[1] and most if not all have revised their systems once or twice in this century. Of the 100 examples, most can be set aside as variations on three or four basic themes. The major components that can be applied in a state like New York, with its indeterminate sentencing

1. The National Institute of Justice report American Prisons and Jails (1980) reports six states without good time (Arizona, Hawaii, Kansas, Missouri, Pennsylvania and Utah). See Volume IV, p. 136. James Jacobs "Sentencing By Prison Personnel," (1982) identifies five states without good time (Hawaii, Michigan, Missouri, Pennsylvania, and Utah). Alabama rescinded good time in 1980. See "Alabama Racing to Avert Order Freeing Prisoners," New York Times, May 4, 1981.

structure, are quite standard. Complications enter in at the stage of developing precise methods of implementation and in the writing of regulations and policy directives. The model that is presented in this section addresses some of the "how to" questions. After having focused in the previous section on those central aspects of good time reform that require legislation, we discuss below issues that will enter into the regulations, procedures and directives governing the application of an earned good time system.

Topics covered are the relationship of earned good time to parole release, how time allowance credits would be calculated, how they would tie into disciplinary procedures, and how further adjustments in the system might take place.

The Parole Release Decision

The good time system we will be discussing for New York State assumes the sentencing structure as it exists in the spring of 1982. The major remedies called for in the previous section are authorization of a reduction of the minimum sentence for parole release consideration by up to one-third of the court-set minimum and revision of the criteria governing release decisions to include earned good time while deleting review of the nature of the crime and any prior criminal history.

Early in the sentence, each inmate must be given an indication of the likely date of release from prison. When he is processed into state custody, the inmate would be told how much good time he would be eligible to earn and the date of his earliest Parole Board appearance. Earned good time would be deducted from the minimum set by either the Parole Board or the court.

The Parole Board could be expected to play a role in determining both general goals for institutional programs and particular program goals for each inmate, although the latter would require an additional step in the process. In order to gain confidence in the records of institutional programs and earned good time, the Board might make periodic recommendations to the governor of program needs for the under custody population.

How Good Time Would Be Earned

Under an earned good time model, credits would be awarded for good behavior, performance on work assignments and/or participation in educational, vocational and treatment programs. One approach to awarding good time credits would be to gear the decision to the individual inmate in the context of a broad set of program goals and behavioral guidelines. To be avoided are both universal standards that would, for example, deny good time to an inmate who failed a high school equivalency exam, and narrowly prescriptive standards that would require each person to complete such an examination prior to undertaking other program activities.

We recommend that DOCS initiate a process that would consider its existing programs and program goals in light of the anticipated increase in significance that would be attached to these activities under an earned good time system.

The Department of Correctional Services could, with advice from the Division of Parole, Commission of Correction, and Division of Criminal Justice Services, revise its prescriptive package in order to allow each inmate the opportunity to earn good time credits. Assistance in the definition of general goals and their applicability to individual inmates could be sought from appropriate state agencies including the departments of education, social services, mental health, labor, mental retardation and aging. Inmates who are retarded, blind or otherwise handicapped; who suffer from delayed stress disorders related to service in Vietnam; who have been victims of violent upbringings, are victims of substance abuse, or who are very young or very old should not be discriminated against either in obtaining viable program activities or in earning good time.

The goal of developing a program for each inmate could be achieved during the course of the normal classification and counseling process. The process would include testing and counseling, and identifying the prisoner's past experience and current capabilities in order to establish individualized program objectives based on a set of general prescriptive goals established for all inmates. Each person's program

goals would then become the basis by which the facility time allowance committee makes its decisions about an inmate's good time credits and by which the Parole Board evaluates the inmate's progress in making a release decision.

Given the likelihood that there will be a shortage of openings for some programs and some work assignments, the decision to award time should not be based on availability or success in gaining admission to the inmate's activity of choice. There should be room for adjustments based on the anticipated period of incarceration, on changes in plans and on the amount of time a person has had to reach his/her expected achievement. If earned good time is to be successful, the addition of new program options -- new areas of educational and vocational programming as well as the expansion of prison job opportunities -- should be a near-term goal.

Losing Good Time

In theory there would be two general reasons a person could fail to earn good time. The most obvious is that linked to the institutional disciplinary system and the place good time loss is given in that system. Second, it must be possible under an earned good time system for a person to "fail to earn" good time.

This second reason for not receiving good time (and therefore the reward of an earlier parole hearing) deserves careful attention in order to avoid discrimination, time consuming paper work and subjective evaluations of inmate behavior. Denial of time allowances solely on grounds of failure to make progress in a program, or difficulties arising out of a work assignment, is a decision that should require carefully developed standards and procedures. For example, a person whose mental health disorder prohibits undertaking a job task ought not automatically be denied good time; instead, a program adjustment or appropriate treatment could be considered. If used arbitrarily, punishment for failure to perform will undermine the incentive value of the entire program just as surely as will failure to ever deny good time for just reasons.

In cases where an inmate is penalized through a superintendent's proceeding for violating a serious prison rule, the extent of the penalties affecting good time could be as follows. Time already earned and credited would be protected from loss. Only the privilege to earn additional time would be affected, and standards for governing how much time could be forfeited per infraction would be set and promulgated. For example, under the current rules "refusal to obey a direct order" can be either a Class A, Class B, or Class C Misbehavior.[2] The amount of earning time that could be lost under the new system could be structured so that no loss is possible for a Class C infraction, a Class B infraction could result in a maximum loss of four months earning time, and a Class A infraction in a maximum loss of eight months.

The advantage of this proposed system is that the penalty is immediate and real. The punishment is not postponed for many years as under the current system. As it now stands, an inmate who loses six months good time in the first year of a five to fifteen year sentence doesn't pay the price until he has served ten years! Then he is denied conditional release for six months for an event that took place ten years earlier.[3]

The present method of taking good time off the maximum might best remain as is rather than switching to a vesting/time out model. Thus in the case above, an inmate who was held until his conditional release date whose only good time loss occurred early in his sentence would be eligible to have that time restored for conditional release at the original date.

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2. "Standards of Inmate Behavior" DOCS (1975)

3. Some questions whether correctional authorities should have the right to affect an inmate's length of incarceration at all on the basis of institutional rules violations. James Jacobs points out that an act that violates statute should result in a criminal proceeding and one that is merely a violation of institutional rules should not result in a person's serving a longer sentence. See Jacobs, "Sentencing By Prison Personnel," 1982, pp. 36-42.

After Parole and Conditional Release

Persons released on parole under the revised system -- either as a result of earned good time or conditional release or regular parole release -- would be subject to revocation of parole status. If a parolee were violated and returned to prison, the effect of earned good time on the amount of time owed would apply only to the maximum of the sentence, and could be calculated in the setting of a new conditional release date.

For example, inmate A.B. is serving a sentence of three to nine years. Because he earned twelve months good time he is paroled after having served two years. After three years on the street, he is returned on a technical parole violation. How will the remaining time be calculated?

The current method would have this person owing four years (a maximum of nine minus two served in prison and three served on the street); but that means that the earned good time is being disregarded. We recommend counting the earned good time (in this case one year) against the maximum, which would mean this person would owe three years instead of four upon return for the parole violation.

The advantage of preventing the loss of any earned good time if the inmate is returned to prison is that it provides an additional incentive for an inmate who is not paroled at his minimum minus good time to keep earning good time credits against his maximum term. For example, in the above case, if the inmate were released after three years and returned after two more on the street, he would owe two and a half instead of four years (a maximum of nine minus three in prison and one and a half of earned good time and two on the street).

We would suggest a further adjustment in the system: good time while on parole. Under the current system a person can be discharged from parole supervision after three years. However, critics assert that this occurs haphazardly and without sufficient regard to general standards. If Parole adopted a good time system for parolees, discharge from supervision would be built into the process.

Another technical issue that is related to parole release decisions concerns the length of time a person can be held after having earned an early release hearing. Currently, the maximum allowable period of time between parole hearings is two years. However, if good time were awarded at a rate of one-third, persons with long minimum sentences could be entitled to more than one appearance before reaching their minimum. (For example, on a 20 to life sentence, the earliest hearing would occur at 12 years, eight months.) We do not advise parole appearances further apart than two years. Any incentive value that parole release possesses for long-termers would be dissipated if holding someone over for more than two years.

Another aspect of the hearing scheduling question is whether a short-termer can have his court-set minimum passed over as a result of a denial at an early parole appearance. (For example, a person serving a 4 to 12 sentence who is denied good time at 2 years, 8 months could in theory be held to 4 years, 8 months before his second appearance.) There is a question of counterproductive consequences if the Parole Board is allowed to pass over the court-set minimum under these circumstances, not to mention the legal question that might make such a decision invalid. We would prefer a provision in the law insisting that regardless of when the first hearing occurs, all inmates must be seen again (if not paroled in the interim) on the date of their court-set minimum.

There are undoubtedly other aspects of good time which we have neglected to discuss in this section. Our aim was to suggest some of the issues that need investigation. We have confidence that the appropriate state agencies have the resources to examine these questions thoroughly, and await their findings and suggestions.

Table 1

CONDITIONAL RELEASES AS A PERCENT
OF TOTAL RELEASES FROM NEW YORK STATE PRISONS
1967-1981

	Total Releases	Parole Releases	Conditional Releases
1967	8,539	5,244	533 (6.2%)
1968	7,970	4,622	1,495 (18.8%)
1969	7,258	4,086	1,450 (20.0%)
1970	7,181	3,860	1,580 (22.0%)
1971	7,296	4,071	1,653 (22.6%)
1972	7,439	4,462	1,366 (18.4%)
1973	6,979	4,351	1,312 (18.8%)
1974	7,407	3,985	1,679 (22.7%)
1975	7,405	4,237	1,901 (25.7%)
1976	8,111	4,979	1,901 (23.4%)
1977	8,616	5,466	1,818 (21.1%)
1978	8,054	5,063	1,978 (24.8%)
1979	8,785	5,370	2,382 (27.1%)
1980	9,416	5,622	2,535 (26.9%)
1981	8,854	5,001	2,534 (28.6%)

Source: Admissions and Releases from Facilities of the New York State Department of Correctional Services for the Calendar Years 1963-1972; 1971-1980; 1981.

Table 2

ADMISSIONS TO N.Y.S. PRISONS
1967-1981

	Total Admissions	Parole Violators	Conditional Release Violators
1967	6,792	1,795 (26%)	1 (.01%)
1968	6,680	1,845 (28%)	296 (4%)
1969	6,875	1,772 (26%)	509 (7%)
1970	6,762	1,761 (26%)	610 (9%)
1971	7,242	1,409 (19%)	572 (8%)
1972	7,358	1,141 (15%)	437 (6%)
1973	7,973	997 (13%)	283 (4%)
1974	8,356	1,010 (12%)	313 (4%)
1975	9,093	890 (10%)	359 (4%)
1976	9,758	836 (9%)	361 (4%)
1077	10,272	984 (10%)	360 (4%)
1978	8,836	871 (10%)	263 (3%)
1979	9,458	984 (10%)	347 (4%)
1980	10,203	1,213 (12%)	470 (5%)
1981	12,451	1,273 (10%)	478 (4%)

Source: Admissions and Releases from Facilities of the New York State Department of Correctional Services for the Calendar Years 1963-1972; 1971-1980; 1981.

Table 3

SPECIFIED MINIMUM SENTENCES
OF 5 YEARS OR MORE
AS A PERCENTAGE OF NEW COMMITMENTS
FOR MALES 1962-1966, 1976-1980

Specified Minima	1962	1963	1964	1965	1966
60 - 119 months	455	495	476	425	346
120 - 239 months	144	143	108	121	132
240 months and up	58	66	60	33	50
TOTAL	657	704	644	579	528
as a % of total commitments for that year	12.7%	13.2%	12.2%	10.6%	11.4%

Specified Minima	1976	1977	1978	1979	1980
60 - 119 months	701	753	652	707	766
120 - 239 months	227	249	191	213	212
240 months and up	142	124	120	133	173
TOTAL	1070	1126	963	1053	1151
as a % of total commitments for that year	13.7%	13.9%	13.9%	14.4%	15.1%

Five year average 1962-1966 = 622.4 as a % of total commitments = 12.0%

Five year average 1976-1980 = 1072.6 as a % of total commitments = 14.2%

* The percentage of inmates coming to prison with specified minima is higher today than it was prior to the 1967 revision of the Penal Law, when one focuses on those inmates whose minimum terms are 5 years or more. For those inmates both parole release and conditional release via good time off the maximum (for non-lifers) are psychologically remote events and are not likely to serve as inducements to good behavior.

Source: Characteristics of Inmates Under Custody 1962-1966; 1971-1979; 1980. State of New York Department of Correctional Services.

Table 4

GOOD TIME LOSS

COMPARATIVE ANALYSIS OF METHODS OF TAKING GOOD TIME

STATE	AMOUNT THAT CAN BE TAKEN	CAN IT BE RESTORED?
California	15-30-45 days, depending on seriousness	Yes, upon appeal
Idaho	10 days	Yes, by use of incentive points
Iowa	All for escape; 2 days per 1st offense, 4 per 2d, 8 per 3d, etc.	No
Minnesota	60 days	Yes, by commissioner
New Jersey	365 days	Yes, but not fully
New York	Unlimited	Yes
Oklahoma	180 days	Yes
Rhode Island	1 day for each day in	Yes, by assistant director
Tennessee	Varies with offense	No
Wisconsin	20 days per offense	No

Source: Corrections Compendium, August, 1981, Inmate Disciplinary Survey.

Appendix A

A History of Good Time in New York

New York was the first state in the U.S. to pass a law embodying the concept of Good Time. In 1817, the State Legislature sought to relieve overcrowding at the state's only prison, located at the time in Greenwich Village. In addition to deciding to build a new prison, eventually located in the town of Auburn in upstate New York, the legislators wished to find an alternative to the existing practice of governors issuing frequent pardons. Upon the recommendation of an investigating committee, the Legislature empowered the prison inspectors to release prisoners prior to sentence termination by virtue of the recommendation of the principal keeper.

The first "Good Time" law offered the possibility of early release to prisoners who behaved well, worked hard and earned the sum of $15 a year for work done either at hard labor on public works or from the private businesses that were allowed to employ inmates on prison grounds. Sentences of no less than five years could be shortened by one-fourth, but repeat offenders were ineligible.

During the next several decades pardons continued to provide more convicted persons their freedom than either good time credits or termination of sentence. In 1862 New York followed the example of several other states by introducing a new system of calculating good behavior credits. A prisoner, under the 1862 law, was able to reduce his or her sentence by one day per month for the first six months and an additional two days for every month thereafter "if he shall diligently work the number of hours prescribed by the rules of the prison or penitentiary,... and if he shall well obey the rules and quietly submit to the discipline of the prison..." The authority for this reduction was vested in the

governor's power to commute the length of a sentence and under this revised system, recommendations went to the governor from the prison wardens.

A series of minor changes were adopted in the ensuing decades; however, it seems that good time alone was not meeting the needs for an efficient release mechanism, for in the latter half of the century the notion of an indeterminate sentence based on a rehabilitative model of incarceration became the major plank in the platform of organized prison reformers.

The indeterminate sentence was originally applied only to juveniles. Later, when the option of indeterminacy was granted to judges sentencing adult offenders in certain offense categories, sentence commutation by good behavior and hard work was offered to all regardless of sentence. In 1903, the Legislature eliminated commutation by good behavior for those with indeterminate sentences; thirteen years later it was reinstated under the new label of compensation.

Chapter 358 of the laws of 1916 enabled prisoners serving indeterminate sentences to receive 10 days compensation per month, thereby reducing the amount of time that had to be served prior to parole release eligibility. Compensation was considered payment for work while commutation, which was still given to inmates with definite sentences, was linked to both good behavior and work. Inmates with definite sentences could receive commutation on a sliding scale weighted on the amount of time already served; they could also receive compensation time at a rate of 2½ days per month.

The system became more confusing in the next decade when frequent amendments juggled terms, rates and sentencing systems. In 1926 compensation was eliminated for inmates with indefinite sentences, only to be restored five years later. Finally, in 1935, Governor Herbert H. Lehman appointed a Law Revision Commission to straighten out the good time mess. The Commission conducted a thorough review of the statute's history and recommended simplification. Hampered by the various amendments dating back to the early years of the century which offered inmates varying amounts of good time depending on the date of the crime, the new law was not able to simplify the system retroactively; however, it did eliminate the distinction between commutation and compensation,

thereby joining together both good behavior and the inmate's work and program record as the basis for awarding good time credits.

Under the revised system, prisoners were allowed (at the discretion of the governor who retained the authority to grant sentence commutations) a reduction of sentence not to exceed 10 days per month. This reduction was applied to the court-imposed term of a definite-sentenced prisoner and to the minimum of the prisoner serving an indefinite term. Those facing life terms were excluded and good time was not applied to the maximum of an indeterminate sentence. A subsequent amendment transfered the power to grant good time credits to the Prison Board, successor to the earlier prison inspectors.

The next major change in the system came with the application of good time to the maximum of an indeterminate sentence. For many years inmates attempted to convince the courts that § 230 of the Correction Law authorized good time off the maximum as well as minimum term of an indeterminate sentence. Perhaps the arguments which had failed in the courts succeeded with the legislators, for in 1962 the law was amended to allow such credits against the maximum. The 1962 amendment also clarified the issue of good time for those with life sentences.

In 1960, with the enactment of subdivision 6 of Penal Law § 1945, every person serving a definite sentence of natural life was given a new sentence with a 40-year maximum. Then, in 1962, the Legislature clarified the status of those entering the system with indeterminate sentences with maxima of life, by allowing lifers to receive good time against their minimum terms except in cases when the sentence was 1 day to life. The next major change came in 1967 with the revision of the Penal Law and the imposition of the present sentencing and good time structures.

Appendix B

A Comparative Analysis of Pre-1967, 1967, and Post-1967 Sentencing Structures

1902 PENAL LAW AND CORRECTION LAW § 230 IN EFFECT AUGUST 31, 1967	1967 PENAL LAW AND CORRECTION LAW § 803 IN EFFECT SEPTEMBER 1, 1967	1967 PENAL LAW AND CORRECTION LAW § 803 IN EFFECT SEPTEMBER 1, 1981
A. Persons sent to state prisons received indeterminate sentences [1*]	A. Same [2]	A. Same [3]
B. Court sets the maximum within statutory limits. P.L. § 1931, § 2189, and § 2192	B. Same P.L. § 70.00	B. Same P.L. § 70.00 and § 70.02 (violent felony offenders)
C. Court must set the minimum. P.L. § 2189	C. Court must set minimum only for A felonies. For B, C & D, court or Parole Board can set minimum. For E felonies only Parole Board can set. P.L. § 70.00	C. Court must set the minimum. P.L. § 70.00 (3) and § 70.02 (4)
D. For first offenders, the lowest minimum had to be at least one year, or at least equal to or greater than the statutory limit. [4]	D. For first offenders, the lowest minimum had to be at least one year, except for A felony convictions when the minimum had to be at least 15 and not more than 25 years. [5]	D. For first non-violent felony offenders, the minimum has to be at least one year, except for A felonies. For violent felonies, the minimum has to be one-third the maximum sentence imposed. [6]
E. For first offenders, the highest authorized minimum was one-half the highest authorized maximum. P.L. § 2189. An armed felony increased the minimum and maximum sentence. P.L. § 1905 [7]	E. For first offenders, the highest authorized minimum was one-third of the maximum term imposed, except for A felonies. P.L. § 70.00 (3) [8]	E. For first violent felony offenders, the highest authorized minimum is one-third of the maximum term imposed; for armed felony offenders, the minimum can be as high as one-half the maximum term imposed. [9]

* Footnotes follow the chart

F. For first offenders except for persons sentenced to death, or life imprisonment or armed during the commission of the felony, a sentence of imprisonment could be suspended (§ 2188). Imprisonment was not mandatory.	F. For first offenders except for persons convicted of an A felony, a revocable sentence such as probation could be imposed. L. 1965 Ch. 1030, § 60.00 and § 65.00 Imprisonment was not mandatory.	F. For first offenders, imprisonment is mandatory for A felons (except certain A-II drug convictions), for B felonies (except certain drug convictions), for many C felony convictions, and for some class D felonies. [10]
G. For two or more offenses, consecutive sentences were mandatory with aggregate minima. [11]	G. There was a presumption in favor of concurrent sentences, and no mandatory consecutive sentences. When consecutive sentences were imposed, the minima merged rather than aggregated. P.L. § 70.25 and § 70.30 (1) (b)	G. Concurrent sentences are authorized for two or more offenses, except when a second or persistent felony sentence is imposed, it must be consecutive. When consecutive sentences are imposed, the minima aggregate. P.L. § 70.25 and § 70.30 (1) (b) as amended L. 1978 Ch. 176.
H. For second felony offenders, the authorized maximum was twice the longest maximum prescribed for a first offender, and the minimum had to be at least one-half the longest maximum authorized for a first offender. P.L. § 1941. Imprisonment was not mandatory. P.L. § 2188 [12]	H. There was no provision for increased punishment for second offenders.	H. For second felony offenders, the minimum is one-half of the maximum imposed except for A-II convictions. Imprisonment is mandatory. [13]
I. For third felony offenders, the prescribed punishment was the same as for second felony offenders, but imprisonment was mandatory. P.L. § 1941 and § 2188.	I. A third offender could, in the court's discretion, be treated as a persistent felony offender, and sentenced to a maximum of life and a minimum ranging from 15 to 25 years. P.L. § 70.10	I. In addition to discretionary persistent felony offender statute, there exists a persistent (3rd) violent felony offender provision pursuant to which imposition of a life sentence is mandatory. The permissible range for the minimum varies with the level of offense. P.L. § 70.08 [14]
J. For fourth felony offenders, life maximum was mandatory, and the minimum had to be at least equal to the longest maximum authorized for a first offense. Imprisonment was mandatory. P.L. § 1942 and § 2188	J. Same as for third felony offense.	J. Same as for third felony offense.

K. Jail time was credited against both the maximum and minimum terms. There was no bar against jail time reducing the minimum below one year. P.L. § 2192	K. Jail time was credited against both the maximum and minimum, but could not reduce the minimum below one year. P.L. § 70.30 (3)	K. Jail time was credited against both the maximum and the minimum. It can reduce the minimum below one year. [15]
L. Good Time credit reduced the indeterminate maximum, except for people serving life sentences, by 1/6 or 2 months per year. The minimum was reduced by 1/3 or 4 months per year. Good time was not allowed for time spent in jail. Correction Law § 230 [16]	L. The maximum for indeterminate sentences was reduced by one-third. No good time credit was allowed against the minimum. Jail time was not subtracted from the maximum in computing the amount of good time. P.L. § 70.30 (4) and § 70.40 (1) and Correction Law § 803 [17]	L. Same as 1967.

FOOTNOTES

1 "All offenders now sentenced to state prison (except those sentenced to terms of one day to life....) are confined pursuant to indeterminate sentences with fixed minimum and maximum terms, or fixed minimum terms, and a maximum of life imprisonment. Under this type of sentence the offender may be paroled after he has served the minimum term." Survey of the New York State Sentencing Structure as of 1963 (hereafter 1963 Survey), page A-5. Offenders serving one day to life (sex related crimes) were eligible for parole after serving six months. (Correction Law § 214 (3))

There were also 5 year definite reformatory sentences for some convicted felons between the ages of 16 and 30. Penal Law § 2184 (a) and § 2185. This outline does not deal with reformatory sentences since they are no longer in effect.

2 "Except as provided in subdivision four (allowing one year definite sentences for D and E felonies in the discretion of the court), a sentence of imprisonment for a felony shall be an indeterminate sentence." Penal law (hereafter P.L.) § 70.00 (1). An indeterminate sentence has a maximum and a minimum which determines the parole eligibility date.

Reformatory sentences existed on September 1, 1967. They applied to young adults, ages 16 to 21. They were 4 year definite sentences with parole occurring at any time at the discretion of the Parole Board.

3 Reformatory sentences were abolished in 1974. Youthful Offenders serve indeterminate sentences with a statutory 4 year maximum, (P.L. § 60.02), and Juvenile Offenders serve indeterminate sentences either in Division for Youth facilities, or Correctional Services facilities. (P.L. § 70.05 and Executive Law § 515 (6))

4 P.L. § 2189 provided for a minimum equal to at least one year, "or in case a minimum is fixed by law, not less than such minimum". As indicated on the attached chart copied from the 1963 Survey, most crimes had no fixed minima; others did, such as

burglary 1st degree (10 years), murder 1st degree (40 years), lynching (20 years), possession of narcotics with intent to sell (5 years) and others.

5 Penal Law § 70.00 (3)

6 The A felony class now includes A-I and A-II felonies. For A-I felonies the lowest minimum remains 15 years; for A-II the lowest minimum is 3 years and the highest is 8 years 4 months. P.L. § 70.00 (3)(a)

Penal Law § 70.02 identifies those felonies that are violent felony offenses. For B and C violent felony offenses, the available range for maximum sentences has a greater number of years at the lower end of the range than for non-violent felony offenses. For example, a non-violent B felony offense must have a maximum that is at least 3 years and no more than 25 years. A B violent felony offense must have a maximum sentence that is at least 6 years and no more than 25 years. With the increase in the lower end of the maximum range, the lowest minimum (1/3 the maximum imposed) which can be fixed is correspondingly enhanced.

7 Even if the maximum set by the court was less than the longest term authorized, the minimum could be equal to 1/2 the longest term authorized as long as it was not greater than the maximum actually set by the court. See McKinney's Practice Commentaries, Penal Law § 70.00, page 200.

8 The minimum could be less than 1/3 of the maximum imposed as long as it was at least one year.

9 For non-violent felony offenders, the highest minimum for first offenders (other than A felonies) remains 1/3 of the maximum actually imposed. For violent first felony offenders, the minimum must be 1/3 (no more and no less), unless the conviction is for an armed felony offense; then the minimum can range in the discretion of the court from 1/3 to 1/2 of the maximum sentence imposed.

10 P.L. § 60.05 establishes authorized dispositions for felony convictions. Mandatory imprisonment for many offenses was required prior to the 1978 Omnibus Crime Control Act, and were in effect prior to the creation of violent felony offenses.

11 If two or more offenses were charged in the same indictment, or consolidated for trial, the court had discretion to impose concurrent or consecutive sentences. P.L. § 2190

12 Under the 1909 Penal Law and the original 1967 Penal Law, the multiple offender provisions did not apply to people convicted of felonies for which life imprisonment was authorized.

Prior to 1942 the minimum authorized for a second felony offender had to be not less than the longest maximum authorized for a first offense. The Laws of 1942 Chapter 700 reduced the permissible minimum so that it could be 1/2 the maximum authorized for a first offense, but not less. The upper limit for the minimum on a second felony sentence probably could be any number of years so long as it was less than the maximum imposed. See People ex rel Jones v. Conboy, 7A.D. 2d 685 (3rd Dept. 1958); People v. Arturo, 269 App. Div. 857 (2d Dept. 1945). Pursuant to P.L. § 1945 the

upper limit for minima was set at 30 years (other than for life sentences for which it was 40 years). Upper limits for the minimum for some other crimes were also established. P.L. § 1945

13 The permissible minimum is greater for second violent felony offenses than non-violent felony sentences since the lower range for the authorized maximum is greater for violent felonies than it is for non-violent felony offenses. P.L. § 70.04 and § 70.06

For A-II drug convictions, a second conviction increases the upper range from 8 1/3 years to 12 1/2 years. P.L. § 70.06 (4)(a)

14 The upper range for the persistent violent felony offender minimum is 25 years. The lower range varies: B - 10 years, C - 8 years, and D - 6 years. The maximum is life. P.L. § 70.08 (3)

15 The Laws of 1979, Chapter 648 eliminated the restriction upon jail time reducing the minimum below one year. The rationale was that bureaucratic reasons impeded the movement of people from local jails to state prisons. Offenders should not be denied credit due to circumstances beyond their control.

16 Example: Inmate has 9 year maximum, 3 year minimum and 1 year jail time. He arrives in state prison on September 1, 1960.

Maximum		Minimum	
9-0-0	max	3-0-0	min
- 1-0-0	jail time	- 1-0-0	jail time
8-0-0	owes	2-0-0	earliest parole eligible date
- 1-4-0	good time (1/6 of 8 years)	- 8-0	good time (1/3 of 2 years)
6-8-0		1-4-0	
60-9-1	date received	60-9-1	date received
67-5-1	earliest good time date	62-1-1	p.e. date

17 Example (same facts as footnote 16 but date of reception September 1, 1980):

Maximum		Minimum	
9-0-0	maximum	3-0-0	minimum
- 1-0-0	jail time	- 1-0-0	jail time
8-0-0	time owed	2-0-0	earliest parole eligible date
80-9-1	date received	80-9-1	date received
88-9-1	maximum expiration date	82-9-1	p.e. date
- 3-0-0	largest amount of good time (1/3 of maximum term)		
85-9-1	conditional release date		

Appendix C

A Study of Time Allowance Committee Decision Making in New York State's Correctional Facilities

To gain an insight into the actual functioning of good time in New York's prisons, one needs hard data on the amount of time taken at superintendent's proceedings and the time restored at time allowance hearings. At the time this study began, the Department of Correctional Services was not collecting this information, except as it was contained in the files of individual inmates. The data was not available either from the central computer or as records of each time allowance committee at the separate prisons.

The Coalition requested DOCS assistance in obtaining data on Time Allowance Committee decisions. At first it was thought that the information would have to be obtained from files at each prison. However, in early August, 1981, DOCS informed us that the decisions of Time Allowance Committees were available on department forms 261a and 261b -- the Good Behavior Allowance Report and the Good Behavior Allowance Record Sheet. These were to be made available to Coalition staff and as a result a research project was devised to take a representative sample from seven facilities.

The Time Allowance Committee conducts two types of hearings. Each inmate is supposed to be reviewed at least once every three years.[1] Although no decision affecting the conditional release date is made at these triennial hearings, the inmate who has lost time is informed that his time can be restored if there is improvement in behavior and the inmate who has minor violations but has not lost any time is warned to "clean up his act".[2]

1. N.Y. ADMIN. CODE tit. 7 § 261.3 (a) (1970).

2. This phrase is taken from a notation that often appeared on form 261a after a triennial hearing involving someone who had lost good time.

The conditional release hearing is held for any inmate who has not been paroled and is approaching two-thirds of his/her maximum sentence. Even if good time has been taken at a superintendent's proceeding, a conditional release hearing is held just prior to the original conditional release date. It is at this hearing that the penalty for having violated a class A or B misbehavior rule is actually assessed. The Time Allowance Committee can choose to restore some or all of the lost time or it can affirm the original penalty. The lost good time is either restored or a new CR date is set based on the amount of time forfeited. In some cases an inmate can be scheduled for another appearance prior to serving the time up to his new conditional release date.

Looking at both types of TAC hearings provides the following information about the actual practice of good time in New York: It indicates how many people lose good time through superintendent's proceedings (although not a total number as persons with short sentences may have lost time but were paroled before seeing the TAC); it indicates how much time is forfeited initially and how much time inmates actually lose; and it indicates some information about people who are held to their conditional release date. (See Table 2)

Although there was no ongoing review of these decisions, The Department had undertaken a one month survey of TAC results for October, 1979 at 32 facilities. This survey produced the following results:

They received information on 356 Time Allowance Committee "case decisions". Of these cases 270 or 76% had no good time loss. Of the 96 cases involving lost good time, no time was restored in 55 cases (64%), some time was restored in 19 cases (22%) and all the time was restored in 12 cases (14%). No record was made in this study of the number of months lost or restored; nor did they look at the interim review hearings or link good time loss to type of facility (maximum, medium or minimum) or to the inmates' sentences.

The Coalition's study design resulted in a form that was used to record TAC reviews for both interim and conditional release hearings. Forms 261a and 261b were to be collected by the DOCS from seven facilities for three consecutive months for review. Seven prisons were chosen--four

maximum security prisons (Attica, Great Meadow, Green Haven and Bedford Hills) and three medium security prisons (Adirondack, Fishkill and Wallkill).[3] Unfortunately, the material was not provided as promised.

Of the seven facilities chosen for review, complete records for only two were seen. The other five provided records for conditional release hearings only and there is no way of knowing whether the records sent were complete either for the months in question or for the overall time period. Doubt is raised by the fact that we saw records for only 28 cases for three months at Green Haven, a maximum security prison with a population approaching 2,000 inmates, and only 17 cases for four months at Wallkill, a medium security prison with a population of 500. Records were provided for only one month from Bedford Hills and Adirondack.

Table 1 summarizes the findings of four facilities: Attica, Great Meadow, Green Haven and Fishkill. It is evident that there is considerable variation not only between Attica, a maximum security facility, and Fishkill, a medium security facility, but also between the three maximum security prisons. At Attica 44% of the persons seen by the TAC over a four month period had lost good time. Of the total number of persons seen by the TAC from the three maximum security institutions, 40% had lost good time.

The pattern of decisions to restore good time shows additional variation. Most of those who had lost good time at Green Haven recovered all their time (10 of 13 cases) while at Attica only 5 of 34 were awarded all their time. For the three facilities 46% of the cases had no time restored, 34% had all time restored and 20% had some time restored.

3. Form 261a indicates whether the inmate was appearing for an interim or conditional release hearing, whether or not he had lost any good time, how much time was taken at superintendent's proceedings and when it is a conditional release hearing how much time is recommended and the reasons for the recommendation. The facility superintendent reviews and must sign authorization for these decisions. Form 261b indicates the allowance recommended and includes the inmate's minimum and maximum sentences. If an adjustment is made the new dates are indicated. The crime of commitment is not cited.

TIME ALLOWANCE COMMITTEE
RESTORATION DECISIONS

	DOCS Survey 1979 33 Facilities	Coalition Survey 1981-82 3 Maximum Security Facilities
All time	12 (14%)	22 (34%)
Some time	19 (22%)	13 (20%)
No time	55 (64%)	30 (46%)

Given the problems of relying on the data collected as a basis for generalizations about good time, the conclusions that can be reached must be of a tentative nature. It would not be straying far from the facts, however, to assert that disparity in application and experience runs deep in the good time system. A second conclusion that can be drawn is that good time as it already exists has the potential to affect a significant portion of the population and therefore can influence the cell capacity of the entire system.

If one were to generalize from the Attica data alone, we can conclude that 300 to 400 cells are occupied each year in maximum security prisons as a result of lost good time. At Attica over a four month period there were 79 persons held to conditional release of whom 34 had lost 6,611 days of time, an average of six and a half months each. Of the 34, 15 had some or all of their time restored--nearly 45%. However, only 825 days or 12.5% of the original time forfeited was returned to those 15 inmates. The net impact of the 5,786 days lost to 200 persons over a four month period, if calculated over a full year for a population of 2,000 would be 17,358 or 48 years. If Attica is typical of the state's maximum security prisons in the taking and restoring of good time the loss to 16,000 inmates held in maximum security facilities is nearly 400 years.

WHO IS HELD TO CR?

One further area of good time came to light during the course of this investigation. Because of the availability of information on the sentences of those cases held to conditional release some conclusions about the population can be considered. Data was collated for Fishkill where sentencing data was available for 105 of the 106 persons held to CR over a five month period.

Of the 105 persons only 10 had lost good time. Thus the other ninety-five were held until they had served two-thirds of their maximum

sentences without evidence of negative institutional behavior serious enough to result in good time loss. (Some of the others might have been disciplined for misbehavior at superintendent's proceedings without forfeiting good time.) What is interesting about this group is that most of these inmates had very short sentences. (See Table 2) Minimum sentences of two years or less accounted for 85% of those with court set minima.

If New York offered good time off the minimum and the presumption of release based on institutional record, most of these people would have been paroled prior to their CR date. Perhaps only the ten who had lost good time would still have been in prison.

TABLE 1

TIME ALLOWANCE COMMITTEE DECISIONS
AT FOUR NEW YORK STATE PRISONS
1981-1982

	Attica	Great Meadow	Green Haven	Fishkill
Number of cases reviewed	199[1]	63[2]	28[3]	151[4]
interim	120	0	0	45
conditional release	79	63	28	106
Total number with good time loss	87	18	13	16
Percent of cases with good time loss	44%	29%	46%	11%
Total number of days assessed	18,132	3,770	840	1,746
Time Allowance Committee Decisions				
Number of CR reviews	34	18	13	16
Restoration Decisions				
all time restored	5	7	10	1*
some time restored	10	3	0	1
no time restored	19	8	3	8
Number of days lost	5,786	3,180	255	800
Percent of time restored	12.5%	15.6%	69.6%	17.1%

Footnotes follow the tables.

TABLE 2

REVIEW OF TIME ALLOWANCE COMMITTEE DECISIONS

AT FISHKILL CORRECTIONAL FACILITY

OVER A FIVE MONTH PERIOD, 1981-82

Number of Conditional Release Hearings	Number who had lost good time	Time Allowance Committee Decisions Restored			Number Days Lost	Percent of Time Restored
		None	Some	All		
105	10	8	1	1*	800	17%

Minimum Sentences of 105 Prisoners Held to Conditional Release at Fishkill Correctional Facility, 1981-1982

Unspecified	31	2 years	12	4½ years	1
1 year	16	2½ years	4	5 years	1
1½ years	34	3 years	1	6 years	1
21 months	1	3½ years	3		

1. Covers meetings held in Sept. Nov. & Dec., 1981 & Feb., 1982
2. Covers meetings held in Sept., 1981 & Jan. & Feb., 1982
3. Covers meetings held in Oct. & Dec., 1981 & Feb., 1982
4. Covers meetings held in Sept., Oct., & Dec., 1981 & Jan., & Feb., 1982

* Restored by court order

The New York State Coalition for Criminal Justice is a statewide membership organization established in 1974. Founded in response to the crisis that was epitomized by the Attica uprising, the Coalition has sought to inform citizens and policy makers of the need for a new public policy in criminal justice. We are dedicated to greater community safety through

- creative and less costly alternatives to incarceration,
- a moratorium on prison and jail expansion,
- expanded victim services,
- meaningful offender/ex-offender programs and services,

and other conciliatory responses to conflict by New York's criminal justice system and communities.

The Coalition is a project of the New York State Council of Churches. Further information about the Coalition can be obtained by writing to:

N.Y.S. Coalition for Criminal Justice
362 State Street
Albany, New York 12210

END