

Testimony Regarding Sentence Credits
House Judiciary Committee
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Citizens Alliance on Prisons & Public Spending

Good morning. I am Barbara Levine, the executive director of CAPPs, the Citizens Alliance on Prisons and Public Spending. We have been advocating the restoration of sentence credits in some form for nearly ten years. We are very pleased that the possibility is finally being discussed. In pursuing that discussion, I think it is helpful to keep the historical context in mind.

For decades, Michigan, like most states, granted prisoners generous amounts of credit for good behavior, commonly referred to as “good time.” Regular good time was awarded on a progressive basis. The number of days per month increased with the number of calendar years served. By the 20th year, regular good time could equal 15 days a month. In addition, special good time could be awarded in amounts up to half the regular credit. Thus, a 40- year minimum could be served in fewer than 16 years. Because the math got fairly complicated, sentencing judges used “good time charts” to decide what sentence to impose in order to ensure that the defendant would actually serve at least the minimum number of years the court intended.

In 1978, the voters adopted an initiative petition to prohibit the award of good time to reduce the minimum sentence. However, by 1982, it became apparent that the elimination of good time was contributing to increasingly overcrowded prisons. Therefore, the legislature restored a limited amount of good conduct credit in the form of five regular and two special disciplinary credit days per month, or up to 84 days a year. This was a much simpler system to calculate. Since the potential amount of credit was the same every year, one only had to multiply 84 days times the minimum number of years to know by how much time the minimum might be reduced. Because some people were not eligible to earn disciplinary credits and others forfeited credits for misconduct, on average, Michigan prisoners served 88 percent of their judicially imposed minimum sentences.

In the late 1990’s, a movement called “truth in sentencing” swept the country. It was fueled heavily by a federal grant program to subsidize prison building, called the Violent Offender Initiative/Truth in Sentencing or VOI/TIS. To be eligible for funds, a state had to require prisoners who committed violent offenses to serve, on average, 85% of their sentences. That is, VOI/TIS was designed to encourage other states to adopt systems more like Michigan’s.

It is important to understand that in 1998, Michigan already met this national definition of truth in sentencing. We were receiving VOI/TIS funds. However, there was a feeling that we also needed legislation called “truth in sentencing.” So we went far past the national norm and eliminated disciplinary credits altogether. The consequence was to lengthen the time served by everyone, regardless of the nature of their offenses, whose good conduct in prison would otherwise have allowed them to earn modest amounts of credit. For instance, a five-year minimum sentence that could have been served in four years and one month with disciplinary credits now requires every day of five years.

Our unique version of truth in sentencing has put Michigan far out of sync with virtually every other state and the federal prison system. Not only do most give some amount of credit for good conduct,

typically called “good time”, many give an additional amount of credit, typically called “earned credit”, for participation in such activities as educational or treatment programs.

We are also out of sync with all 83 Michigan counties. Under MCL 51.282, Michigan’s sheriffs are authorized to award jail inmates one day of good time for each six days of the sentence. Sheriffs routinely use that authority to help control county jail populations and promote compliance with jail regulations. As a result, a person convicted of felonious assault who receives a year in the county jail can earn 54 days of credit. If the same person receives a prison term with a one year minimum, he or she can earn no credit.

Totally eliminating credits contributed significantly to prison growth; restoring them would significantly reduce the population and save tens of millions of dollars. Given current budget realities, that alone makes the idea worth considering. But credits serve another important purpose by rewarding positive behavior. There is no question the department can control prisoners through a variety of negative sanctions – loss of privileges, segregation, movement to a higher security level, denial of parole. But it’s all stick and no carrot.

Opponents of sentence credits suggest that prisoners are supposed to behave appropriately and participate in programs and that they should not be rewarded for merely doing what is expected of them. However, that position runs counter to common knowledge about learning and behavior modification. Adults, children and animals all respond better to positive reinforcement than to punishment. We expect children to earn good grades and employees to do their jobs, but we still reward children who bring home good report cards and give merit raises to employees who do their jobs well.

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

So with history, common correctional practices, economics and positive behavior reinforcement all arguing in favor of restoring credits, what are the arguments against? There are two: transparency and public safety.

Opponents argue that sentencing credits are dishonest. Victims need certainty about when the defendant will be released. But this implies that 48 other states, 83 Michigan sheriffs and the entire federal court system are “untruthful” and that eliminating all credits is the only way to keep the sentencing process transparent. In fact, transparency can be achieved just as easily, and much less expensively, by simply stating at sentencing that the minimum is subject to reduction by up to X amount of credit. The State of New Jersey has a court rule entitled “Statement of Estimated Real Time to be Served” that requires the sentencing judge to do just that.

The degree of transparency also depends on how complex the system of credits is. Opponents say that restoring the old progressive good time system would make anticipating the actual time to be served like throwing darts at a board. However, they do not say why the straightforward availability of the same set number of days for every prisoner, every month, would be so hard to calculate. It must be remembered that truth in sentencing did not eliminate good time; it eliminated the much simpler system of disciplinary credits.

The other argument is that restoring credit is going to loose thousands of violent and habitual criminals into our communities, thereby causing crime to increase. There are several problems with this argument.

First, people who are so seriously out of control that they engage in substantial misconduct in prison won't even earn credits and therefore will not be eligible for earlier parole consideration.

Second, credits applied to the minimum sentence only make people eligible for parole sooner. They don't require that anyone be paroled. The parole board would still retain complete discretion to deny release to anyone it believed to be currently dangerous. The people who would benefit would be those who were going to be paroled at their earliest release date in any event.

Third, a large body of research shows that there is no relationship between recidivism and length of stay. Reducing a short minimum sentence by a few months or a long one by a few years will not make it more likely that someone with an excellent institutional record will commit a new crime.

Fourth, awarding credits to people convicted of assaultive and sex offenses would not endanger public safety because research also shows that these groups of offenders actually have the lowest recidivism rates. We should not confuse the seriousness of the offense with the current risk of re-offending. The fact that someone committed a very serious crime years ago does not mean they are dangerous today. I'm not going to unduly lengthen my testimony by discussing all this research now, but I would be happy to provide the details to any member who is interested.

We can't afford to make policy based on anecdotes and get tough rhetoric. I encourage you to ask those who oppose restoring credits for straightforward answers to a number of questions.

- Exactly what evidence is there that restoring credits in any form and any amount would threaten public safety?
- If awarding sentence credits for good institutional conduct or participation in treatment, academic, vocational and work programs is dangerous, why do virtually every other state and the federal government do it?
- If awarding sentence credits is dishonest, should we repeal the availability of sheriffs' good time?
- Which use of \$90,000 would protect their constituents most – denying credits to three prisoners with five year minimums who have perfect institutional records or keeping an experienced police officer on the force for a year?
- Would they support an "opt out" system that allowed counties to decide not to permit people sentenced by their courts to receive credits so long as the county, rather than state taxpayers, paid the difference in cost?

I want to close by commenting briefly on the alternative approach of awarding very generous amounts of credit but only on the maximum sentence. While I appreciate the importance of searching for innovative compromises, I'm afraid this particular approach won't provide any of the benefits of credits on the minimum. Because credits on the maximum do not make a person eligible for parole any sooner, they would not produce much in the way of cost savings or incentives for prisoner behavior. People would still have to serve their entire minimum as they do now. Once they have done that, they can be paroled at any time whether they receive credits or not. Ironically, the only people who would benefit from credits only on the maximum would be those who the parole board chooses not to parole on the minimum.

The even greater irony is that credits on the maximum substantially limit the parole board's discretion. Credits on the minimum merely permit the board to release someone earlier because the minimum simply defines when the board gets jurisdiction. But when people reach their maximum, they have to be discharged. So if someone behaved perfectly in prison and earned all the credit possible, the board could not deny release even if it had good reason to believe the person was currently dangerous. For example, if my calculation is correct – which it may not be so I encourage you to double-check -- someone sentenced to 2 to 10 years would max out in about 5.5 years. Someone sentenced to 10 to 20 years would max out in about 11 years. In each example, the well-behaved prisoner who posed no threat to the public could not be rewarded by becoming parole eligible sooner, but the well-behaved prisoner who posed a serious threat to the public would have to be released only a little more than half-way to the statutory max.

This is a controversial issue that will require a lot of good faith effort to resolve. But now that it is finally on the table, I urge you to make that effort. Establish a work group that includes all the stakeholders. Collect information about what is going on in other states. Examine the research on length of stay and recidivism. Define the parameters of what you want to accomplish and test alternative approaches against them. And then maybe we can answer the question posed by former MDOC Director Bob Brown, a strong proponent of restoring credits: If truth in sentencing doesn't improve public safety, can't we be honest for a lot less money?