

Commission on Alternatives to Incarceration**Senator Stanley W. Lyson, Chairman****April 18, 2012**

The Department of Corrections and Rehabilitation (DOCR) was asked to provide an overview of our state's good time law or Performance-based sentence reduction (PBSR), and the DOCR's policy and procedures on how PBSR is applied.

PBSR replaced the old good time law in 1991 when Chapter 12- 54.1 of the North Dakota Century Code was amended. I have provided copies of the old law and the current law. (*Handouts 1 & 2*). Our current PBSR law is a vast improvement over the old good time law. The old good time law was confusing and difficult to apply and often resulted in inmates sentenced to longer sentences actually serving less time than inmates sentenced to shorter periods of incarceration. There was also no performance criteria tied to the awarding of good time. Under the old law, because of the greater amount of good time granted to inmates, the impression was that of a revolving door at the state penitentiary.

The current PBSR law requires inmates to meet performance criteria such as participation in court-ordered or staff-recommended treatment and education programs. Inmates may earn up to five days of good time per month for each month of the sentence imposed. However, inmates cannot be credited for any sentence reduction for time spent in custody prior to sentence and commitment, for time under supervised probation, or for any sentence where the incarceration time is six months or less. Inmates may also receive up to two (2) days per month of meritorious conduct sentence reduction for outstanding performance or heroic acts or as a special control and security measure, as provided by penitentiary and department rules and upon written recommendation of a

department multidisciplinary team. I have provided a copy of the DOCR's policy and procedure on how PBSR is applied. (*Handout 3*).

The application of PBSR was also impacted by the passage of the Truth-In-Sentencing Law passed into law in 1995. Offenders convicted of and sentenced to state prison must serve 85% of their sentence without benefit parole. Qualifying offenses are murder, manslaughter, aggravated assault, kidnapping, robbery, gross sexual imposition with the use of force or threat of the use of force or a weapon, burglary and menacing or threatening the inhabitants or using a weapon during the commission of the offense. Conspiracy sentences are separated out from the actual act or accomplice.

The question of whether North Dakota is behind the curve in awarding inmates credit for good behavior can be answered "no". The purpose of good time or PBSR can be achieved with the current five (5) days per month. PBSR provides an effective incentive for inmates to participate in correctional programming and abide by institutional rules. Overly aggressive or expansive good time can erode the public's confidence in the criminal justice system by viewing the prison as having a revolving door. PBSR is a backend mechanism to impact the length of incarceration. A more proactive approach would be to address sentencing practices. If PBSR were increased, it is likely sentences would be lengthened as well to account for the increased good time.

A comparison of the number of good time days awarded in the various states cannot be accurately compared without examining each state's sentencing laws. In the 1990's when the federal government was rewarding states with Truth In Sentencing Grants, a number of states abolished their parole boards and adopted determinate sentencing. North Dakota has a discretionary parole law whereby parole decisions are completely at the discretion of the board. However, inmates subject to the 85% law are not eligible to meet the parole board.

CHAPTER 118

HOUSE BILL NO. 1212
(Committee on Judiciary)

(At the request of the Department of Corrections and Rehabilitation)

INMATE SENTENCE REDUCTIONS

AN ACT to amend and reenact sections 12-54.1-01, 12-54.1-03, and 12-54.1-04 of the North Dakota Century Code, relating to the sentence reduction provisions for inmates at the state penitentiary and its affiliated facilities; and to repeal section 12-54.1-02 of the North Dakota Century Code, relating to good conduct sentence reduction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. ~~Good conduct~~ Performance based sentence reduction. Offenders sentenced to the penitentiary or state farm ~~any of its affiliated facilities~~ shall be eligible to earn ~~good conduct sentence reductions.~~

~~Whenever two or more sentences have been imposed upon an offender, the aggregate of the several sentences shall be the basis for determining the rate of reduction. Sentences may be reduced at the following rates:~~

- ~~1- Five days per month on a sentence of more than three months but less than one year.~~
- ~~2- Six days per month on a sentence of one year or more but less than three years.~~
- ~~3- Seven days per month on a sentence of three years or more but less than five years.~~
- ~~4- Eight days per month on a sentence of five years or more but less than ten years.~~
- ~~5- Ten days per month on a sentence of ten years or more.~~

based upon performance criteria established through penitentiary rules. Performance criteria includes participation in court ordered or staff recommended treatment and education programs and good work performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less.

SECTION 2. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction. In addition to sentence reductions under ~~sections section 12-54.1-01 and 12-54.1-02,~~ offenders sentenced to the state penitentiary or ~~state farm~~ any of its affiliated facilities may be awarded, as provided by penitentiary rules and regulations upon written recommendation of a penitentiary multidisciplinary team, lump-sum or a monthly rate of meritorious conduct sentence reductions for outstanding performance or heroic acts or as a special control and security measure. Such sentence reductions may be made only after a written recommendation is made by the warden, and approved by the director of ~~institutions~~ the department of corrections and rehabilitation. Any sentence reduction for special control or security measures may not exceed two days good time per month per inmate.

SECTION 3. AMENDMENT. Section 12-54.1-04 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-04. Basis for meritorious conduct sentence reduction. Meritorious conduct sentence reductions may be awarded for any of the following performances or acts:

1. Exceptional quantity and quality of work far beyond normal expectations for the job assignment.
2. Beneficial suggestions resulting in substantial savings to the state.
3. Acts of outstanding heroism.
4. Acts which protect the lives of employees or other inmates or the property of the institution.

Meritorious conduct sentence reductions shall be awarded upon written recommendation of the warden and approved by the director of the department of corrections and rehabilitation on a lump-sum basis resulting from separate recommendations and approvals. Such reductions may not be awarded on a continuing days-per-month basis beyond the month in which a reduction award is made. Such sentence reductions may not be granted for any month in which ~~good conduct the performance sentence reductions reduction under sections section 12-54.1-01 and 12-54.1-02 were was~~ withheld or forfeited.

SECTION 4. REPEAL. Section 12-54.1-02 of the North Dakota Century Code is repealed.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 12-54.1 SENTENCE REDUCTION FOR GOOD OR MERITORIOUS CONDUCT

12-54.1-01. Performance-based sentence reduction.

Except as provided under section 12.1-32-09.1, offenders committed to the legal and physical custody of the department of corrections and rehabilitation are eligible to earn sentence reductions based upon performance criteria established through department and penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction five days good time per month for each month of the sentence imposed. The department may not credit an offender with any sentence reduction for time spent in custody prior to sentence and commitment, for time under supervised probation, or for any sentence where the incarceration time is six months or less.

12-54.1-02. Basis for good conduct sentence reduction.

Repealed by S.L. 1991, ch. 118, § 4.

12-54.1-03. Meritorious conduct sentence reduction.

Except as provided under section 12.1-32-09.1, offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts or as a special control and security measure, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction for special control or security measures may not exceed two days good time per month per offender.

12-54.1-04. Basis for meritorious conduct sentence reduction.

Meritorious conduct sentence reductions may be awarded for any of the following performances or acts:

1. Exceptional quantity and quality of work far beyond normal expectations for the job assignment.
2. Beneficial suggestions resulting in substantial savings to the state.
3. Acts of outstanding heroism.
4. Acts which protect the lives of employees or other inmates or the property of the institution.

Meritorious conduct sentence reductions must be awarded upon written recommendation of the warden and approved by the director of the department of corrections and rehabilitation on a lump sum basis resulting from separate recommendations and approvals. Such reductions may not be awarded on a continuing days-per-month basis beyond the month in which a reduction award is made. Such sentence reductions may not be granted for any month in which the performance sentence reduction under section 12-54.1-01 was withheld or forfeited.

PROCEDURES NORTH DAKOTA STATE PENITENTIARY  NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION		PROCEDURE NUMBER: 1C-1
		APPENDICES: A. Authorization to Disclose Information
		ACA/Pbs RELATED STANDARDS: ACI 4-4095 thru 4-4099
CHAPTER TITLE: 1. Administration and Management	SECTION: C. Records Management	SUBJECT: Offender Records
DATE ISSUED: November 30, 2011	DATE(s) REVISED:	

1. **APPLICABILITY:** All employees of the North Dakota State Penitentiary, especially those that work with inmate records.
2. **DEFINITIONS AND ACRONYMS:**
 - A. **Commitment Papers:** The document signed by the sentencing judge or duly authorized officer of the court ordering or authorizing a sentence of imprisonment of the inmate in the legal and physical custody of the Department of Corrections and Rehabilitation.
 - B. **Court Ordered Treatment and Education:** Active involvement by the inmate in all court ordered programming and treatment including compliance with all applicable prison rules and regulations set forth in the Inmate Handbook.
 - C. **Filenet:** An electronic storage database.
 - D. **Good Work Performance:** Satisfactory work on job assignments, unless non-employment is medically approved by written notification.
 - E. **Inmate:** An offender committed to the legal and physical custody to the Department of Corrections and Rehabilitation by the court or authority of jurisdiction and who is confined in the maximum, medium, or minimum facilities or Dakota Women's Correctional and Rehabilitation Center.
 - F. **iTAG:** The management information system utilized by adult and juvenile facilities.
 - G. **Multi-Disciplinary Team:** Groups of professionals from diverse disciplines who come together to provide comprehensive assessment and consultation.
 - H. **Non-Compliance Status:** Noncompliance with recommendations of the treatment department staff of the Department of Corrections and Rehabilitation or non-compliance with court-ordered treatment.

- I. Offender: An individual sentenced to the custody of the Department of Corrections and Rehabilitation, individuals transferred to the physical custody of the Department of Corrections and Rehabilitation by another state or the federal government, or persons under the supervision and management of the Department of Corrections and Rehabilitation.
- J. Performance Based Sentence Reduction: A reduction of five days good time per month (except any sentence where the incarceration time is six months or less) based on participation in court ordered or staff recommended treatment, educational programs and good work performance.
- K. Projected Release Date: The date the inmate will be released if all variables remain unchanged.
- L. Records: Information concerning the individual's criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, detainers, personal property receipts, visitors' lists, photographs, fingerprints, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence.
- M. Release Date: The date the inmate will be released from the Department of Corrections and Rehabilitation control either to another jurisdiction or to the community. This does not include releases to community programs or similar activities considered an extension of confinement.
- N. Staff Recommended Treatment and Education: Active involvement by the inmate in all recommended programming and treatment and including compliance with all prison rules and regulation set forth in the Inmate Handbook.
- O. CIT: Crisis Intervention Team
- P. DOCR: Department of Corrections and Rehabilitation
- Q. EMRS: Electronic Medical Records System
- R. GED: General Educational Development
- S. ND: North Dakota
- T. N.D.C.C: North Dakota Century Code
- U. NDSP: North Dakota State Penitentiary (maximum security facility)
- V. PBSR: Performance Based Sentence Reduction

3. **PROCEDURES:**

A. Case Management Record:

1. Initiation of record:

- a. All inmate records are initiated at the NDSP. Separate electronic files are then maintained in Filenet to include case

history, legal, property, treatment, and visiting. Medical records are maintained in the EMRS. Refer to Policy 8D-6, Inmate and Juvenile Health Records.

2. Security:

- a. Filenet access will be determined by the administrative staff officer.

3. File retention is completed at the NDSP.

B. Transfer of Records:

1. Case files are electronic and are viewable at all DOCR facilities and the Dakota Women's Correctional Rehabilitation Center. (4-4096)

- a. County jails have access to iTAG and may request other information, as needed.

C. Computation of time is completed at the NDSP. (4-4097)

1. Computation of sentence:

- a. The NDSP records officer will read and interpret the commitment papers. The NDSP records officer shall consider the following in computing the sentence:

- 1.) Date inmate received
- 2.) Type of commitment
- 3.) Offense
- 4.) Date of offense, or dates of offenses
- 5.) Type of sentence imposed by the court and applicable procedure:
 - a.) Adult
 - b.) Concurrent
 - c.) Consecutive
 - d.) Dual sentence
 - e.) Minimum mandatory
 - f.) Special court orders, including habitual offender and special dangerous offender provisions, relating to sentence
 - g.) Application of N.D.C.C. 12.1-32-09.1 <http://www.legis.nd.gov/cencode/t12-1c32.pdf> relating to violent offender

- 6.) Sentence term
- 7.) Date sentence imposed
- 8.) Sentence modification
- 9.) Fines or costs affecting sentence
- 10.) Prior probation affecting sentence
- 11.) Credit for jail time (time spent in custody)
- 12.) Inoperative time for escape of bail
- 13.) PBSR earned to reduce sentence

2. Projected release fate calculations:

- a. The method used by the NDSP records officer to calculate an inmate's projected release date is based on the N.D.C.C. sentence reduction credit statute in effect at the time the inmate committed the crime.

- 1.) PBSR:(N.D.C.C.12-54.1-01)
<http://www.legis.nd.gov/cencode/t12c54-1.pdf>

- a.) Except as provided under section 12.1-32-09.1, <http://www.legis.nd.gov/cencode/t12-1c32.pdf> offenders committed to the legal and physical custody of the DOCR are eligible to earn sentence reductions based upon performance criteria established through department and penitentiary rules. Performance criteria includes: participation in court ordered or staff recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction five days good time per month for each month of the sentence imposed. The department may not credit an offender with any sentence reduction for time spent in custody prior to sentence and commitment, for time under supervised probation, or for any sentence where the incarceration time is six months or less.

- 2.) Sentencing of violent offenders:

- a.) (N.D.C.C.12.1-32-09.1)
<http://www.legis.nd.gov/cencode/t12-1c32.pdf>
- b.) Any offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of

subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the Supreme Court. Notwithstanding this section, an offender sentenced under subsection 1 of section <http://www.legis.nd.gov/cencode/t12-1c32.pdf> may not be eligible for parole until the requirements of that subsection have been met.

- (1) 12.1-16-01 Murder
- (2) 12.1-16-02 Manslaughter
- (3) 12.1-17-02 Aggravated Assault
- (4) 12.1-18-01 Kidnapping
- (5) 12.1-20-03 Gross Sexual Imposition (subsection 1a or subsection 2b) 1a or 2b {... compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping to be inflicted on any human being...}
- (6) 12-1-22-01 Robbery
- (7) 12.1-22-02 Burglary (subsection 2b) 2b {... inflicts or attempts to inflict bodily injury or physical restraint...menaces...is armed with a firearm, destructive device or other weapon...}

c.) Inmates in this category have two dates calculated:

- (1) A projected good time release date in accordance with N.D.C.C. §12-54.1-01.
 - (a) Any good time that the 85 percent offender forfeits through

disciplinary action will be added on the projected good time release date.

- (b) Any meritorious conduct sentence reduction that the 85 percent offender receives will be deducted from the good time release date.
- (2) A date that is 85 percent of the total term of sentence ordered by the court and includes credit for the number of days in custody, prior to when the sentence began.
- d.) The later date of the two dates becomes the inmate's earliest possible release date.
- e.) The 85 percent date is calculated by:
 - (1) Subtracting any credit given by the court for jail time from the maximum release date.
 - (2) Subtracting the date sentence began from the maximum release date to determine the number of days to be served on the total sentence term.
 - (3) Multiplying that number of days by 85 percent to determine the number of days that have to be served.
 - (4) Adding that number of days to the date sentence began to arrive at the 85 percent date.
 - (5) Using the ND Supreme Court mortality tables for life sentence where there is eligibility for parole.
- f.) If the inmate is given additional jail time credit by the court during his incarceration, the 85 percent date will be recalculated.
- g.) Offenders whose sentences are subject to N.D.C.C. § 12.1-32-09.1 may earn meritorious good time but cannot be released prior to the 85 percent date.
- h.) Offenders whose sentences are subject to N.D.C.C. § 12.1-32.09.1 are not eligible for parole until they have served 85 percent of the sentence.

- 3.) All sentences shall be computed by one NDSP records officer and verified for accuracy by a second NDSP records officer. Both shall sign the computation documents.
- 4.) The NDSP records officer shall copy completed sentence computation documents to the inmate and scan into the legal section of FileNet.
- 5.) Revisions to sentence computation documents shall be made as conditions warrant. Release dates are sometimes altered by the accumulation or forfeiture of earned good days or by modifications of a sentence by the court. Changes shall be recorded in a timely manner. The iTAG system contains the most accurate projected release date.

3. Criteria for award of PBSR:

- a. No PBSR will be given on jail credit (time spent in custody prior to sentencing).
- b. PBSR will be automatically calculated within the first week of the inmate's arrival. The calculated PBSR will only be a projection of possible good time and is subject to change.
- c. If an inmate fails to comply with court-ordered or staff-recommended treatment, education or work program, the Disciplinary Committee (Adjustment Committee) may stop PBSR, subject to the Warden's approval. PBSR is stopped from the date of the Disciplinary Committee hearing. PBSR may be reinstated after the inmate meets the required compliance with court-ordered or staff-recommended treatment programming and employment. It is the inmate's responsibility to notify the Records Supervisor when the inmate is in compliance.
 - 1.) If the inmate quits a work assignment, the DOCR may stop the inmate's PBSR.
 - 2.) If the inmate quits GED, tutoring or Read Right, the DOCR may stop the inmate's PBSR.
 - 3.) GED, tutoring and Read Right is mandatory. If an inmate who has a job assignment is recommended to attend GED and the inmate quits the GED program, the DOCR may stop the inmate's PBSR, even though the inmate is still working.
 - 4.) Re-entry skills training, vocational classes and college classes are considered electives.
 - 5.) If an inmate whose PBSR has been stopped and is transferred to another contract prison, county jail, or a

halfway house, the PBSR may be started on the date of the transfer.

6.) If the inmate quits a treatment program, the inmate loses the ability to earn PBSR. If the inmate at some point is placed on a waiting list to begin treatment again, the DOCR will not start the inmate's PBSR until the inmate is participating in a treatment program.

7.) If an inmate's PBSR is stopped for non-compliance with treatment and the inmate is involved in cognitive restructuring, the inmate may be awarded good time based on the length and completion of the program.

d. Offenders whose sentences are subject to section 12.1-32-09.1 **must** serve a minimum of 85 percent of the imposed sentence. The only way that can be reduced is through commutation (pardon) by the Governor. The same criteria for determining PBSR applies to offenders serving sentences subject to section 12.1-32-09.1, except that offenders whose sentence is subject to section 12.1-32-09.1, must serve at least 85 percent of their sentence served prior to release.
<http://www.legis.nd.gov/cencode/t12-1c32.pdf>

e. The Disciplinary Committee may take an inmate's earned PBSR during the Disciplinary Committee process for rule infractions, as provided in the Inmate Handbook.

f. Awards of meritorious conduct sentence will be based upon the recommendation of the Multi-Disciplinary Team and the Warden for outstanding performance or heroic acts or as a special control and security measure. This will be awarded in a lump sum not to exceed two days per month after approval from the Director of DOCR. Such reductions may not be awarded on a continuing day's per month basis beyond the month in which a reduction is made. Such sentence reductions may not be granted for any month in which the performance sentence reduction under section 12-54.1-01 was withheld or forfeited. (12-54.1-04)

1.) Meritorious good time may be awarded to CIT members. See Policy 1C-5, Crisis Intervention Team.

4. Life sentences without eligibility for parole:

a. An inmate who is subject to a life sentence without eligibility for parole may accrue sentence reduction credits, in accordance with this policy. Accrued sentence reduction credits may only be applied in the event of a sentence commutation by the Governor or by a sentence modification or correction by a district court that establishes a definite term of sentence with eligibility for parole.

D. Inmate access to information in their case records. (4-4098)

1. Inmates may request to view their legal file.
2. Inmates are prohibited from reviewing their case history, treatment, and medical records, as mandated by N.D.C.C. 12-47-36. <http://www.legis.nd.gov/cencode/t12c47.pdf>
3. Refer to Policy, Confidentiality and Release of Information, 1C-6.

E. Release of Information:

1. The DOCR Authorization to Disclose Information form complies with applicable federal and state regulations. Unless the Authorization to Disclose Information form is required by statute, the inmate signs the Authorization to Disclose Information form prior to the release of information and a copy of the form is maintained in the inmate's case history file. (4-4099)
 - a. Inmate information is released, as stated in N.D.C.C. 12-47-36 and 42 CFR. http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title42/42cfr2_main_02.tpl
4. **SIGNATURE:** These procedures become effective when signed by the Director of the Department of Corrections and Rehabilitation.

This copy has been approved by the Director with the original signature on file.