

Presentation - Understanding Prison Sentences

Included in the Department of Corrections' (SCDC) May 24, 2019 letter to the House Legislative Oversight Committee (LOC). This information was provided in response to the following question in LOC's May 16, 2019 letter to the Department of Corrections, "7. Please provide a brief summary of the training provided to counties regarding data they provide SCDC, including, but not limited to, why the agency believed the training was needed, types of data the training discussed, entities invited to the training, entities that did not attend the training, number of times in the past in which the training has been held, and the agency's plans for future training, if any."

In addition to providing the information in this document, SCDC provided the following response:

- A four-hour county training is conducted on a yearly basis to update and train county detention center employees on paperwork needed and procedures for transporting inmates to the R&E centers. Training was conducted on January 29 and January 30, 2019. The training was offered on two (2) separate days to allow for shift coverage at the participating agencies. Areas covered included issues regarding bringing more or less inmates than scheduled, incorrect/missing paperwork, inmate property, missing/incomplete medical documentation. The next training will be held in January of 2020. Please see attachments Agenda and County Participant Roster.
- Also attached are PowerPoint presentations that are routinely presented by the SCDC General Counsel's Office at conferences and other gatherings several times throughout each year. The audiences for these presentations are generally solicitors, public defenders, judges, and private defense attorneys. The first Power Point deals with all types of sentences, while the second addresses Youthful Offender Act sentences.

UNDERSTANDING PRISON SENTENCES

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Background Information about SCDC

- SCDC currently has 21 institutions all across the state.
- Categorized into 4 security levels
 - Level 3 - high
 - Level 2 - medium
 - Level 1-B - minimum
 - Level 1-A – pre-release work centers

Jurisdiction of SCDC

- Per S.C. Code 24-3-20 (A), a person sentenced to “more than three months” comes to SCDC.
- If sentence is less than three months, it must be served at the county detention center.
- Per S.C. Code 24-3-30 (A), SCDC, not a judge, has authority to determine how to classify an inmate and where to house the inmate.

Three Categories of Adult Sentences

- Parolable sentences – earn the most amount of good time and work/education credits – 20 days GT and average 10 EWC per month (these offenders, on average, actually serve between 51% and 65% of their sentences)
- No parole or 85% sentences – earn much less credit – 3 days GT per month and max 6 days of EWC per month
- Day for day or “mandatory minimum” sentences – no credits to reduce the service time – sentence is served “day-for-day”

Where Does the “85%” Come From?

SECTION 24-13-150. Early release, discharge, and community supervision; limitations; forfeiture of credits.

(A) Notwithstanding any other provision of law, . . . an inmate convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, **until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.**

NOTE: This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended.

85% offenses (continued)

-No-parole (85%) offenses: S.C. Code 24-13-100: No parole offenses are Class A, B, or C felonies, or felonies exempt from classification under 16-1-10(d), which are punishable by a maximum term of imprisonment of twenty years or more.

Section 16-1-20(A):

- Class A offenses: punishable by 30 years or more
- Class B offenses: punishable by 25 years or more
- Class C offenses: punishable by 20 years or more

Good Time Credit – S.C. Code 24-13-210

- Parolable offenses – 20 days earned per month
- No parole (85%) offenses – 3 days per month
- Day-for-day (mandatory minimum) sentences - no good time available

Earned Work and Education Credits – S.C. Code 24-13-230

- Parolable offenses – maximum yearly 180 days – average 10 days of credit per month for 5-day per week job
- No parole (85%) offenses – maximum yearly 72 days – 6 days per month
- Day-for-day (mandatory minimum) offenses – no work or education credits available

Jail Time Credit – S.C. Code 24-13-40

- In every case in computing the time served by a prisoner, full credit against the sentence **MUST** be given for time served prior to trial and sentencing and **MAY** be given for time spent on monitored house arrest.
 - Case law says providing jail time credit is mandatory
 - Credit for monitored house arrest is per a June 2013 amendment – completely discretionary with sentencing judge – please ensure the amount of credit is clear on the sentence sheet if awarding it.
 - Good time credit (at the rate applicable to the inmate's offense) is automatically factored into jail time credit.

Exceptions to Jail Time Credit

- Two exceptions are set forth in S.C. Code 24-13-40:
 - When a prisoner is an escapee from a penal institution
 - When a prisoner is actually serving another sentence (whether in South Carolina or elsewhere)

Subsequent Concurrent Sentences

- “Concurrent” is NOT the same as “concurrent and backdated”
- A subsequent concurrent sentence will start on the date of sentencing, minus any jail time applicable to that particular offense.
- A subsequent sentence will not automatically be backdated to the start date of a previously-imposed sentence unless the judge specifically writes the previous start date on the subsequent sentence sheet.

Violent vs. No Parole (85%)

- Violent offenses are defined by S.C. Code 16-1-60
- “No parole” or 85% offenses are defined by S.C. Code 24-13-100
- An 85% offense is usually also a violent offense, but not always:
 - Example: Trafficking crack 10-28 grams, 1st offense
 - Violent because listed in S.C. Code 16-1-60
 - But not 85% because only carries 3-10 years

Maxout date vs. Parole Eligibility Date

- Maxout (release) date:
 - Date when sentence is satisfied or “completed”
 - Calculated based upon incarcerative sentence only, NOT including any suspended portion of a split sentence
 - May or may not be followed by supervision in the community – could be followed by probationary term or CSP if 85% offender
- Parole eligibility date:
 - Earliest *opportunity* for release – inmate gets to go before the parole board – the board makes the final decision on whether an inmate should be released on parole and they determine the conditions
 - Calculated based upon total sentence, not just incarcerative portion – includes the suspended portion of a split sentence
 - If paroled, offender continues to serve his or her sentence in the community under supervision by the Department of Probation, Pardon & Parole Services (“PPP”)

Additional Notes on Parole Eligibility

- Violent (but not 85%) offenders – eligible after serving one-third of sentence
- Non-violent offenders – eligible after one-fourth of sentence
- Work credits can be used to “back up” the parole eligibility date
- Subsequent violent offenders – per statute, not eligible for parole if serving a sentence for a violent offense and had a prior violent offense under S.C. Code 16-1-60

CDR Codes v. Statutes

- Case law indicates that SCDC must follow the statute listed on the sentence sheet in the event there is a mismatch between the statute and the CDR code listed.
 - Example: Drug offenses under S.C. Code 44-53-370 and -375
 - Be sure all statutory subsections are filled out (i.e., S.C. Code 44-53-370 (e)(2)(a)(2))

Sentence Calculator

- www.doc.sc.gov
- Research tab
- “Release Date Calculation” near bottom of list on the right hand side
- Accept disclaimer – then can input various sentences
 - This provides an ESTIMATE only and assumes best possible conditions.
 - Does not take into account time spent at R&E (intake) – add at least two months to be on the safe side.

§ 44-53-370 and -375 and Bolin

- The Omnibus Crime Reduction and Sentencing Reform Act of 2010 (effective date June 2, 2010) added the following language to parts of 44-53-370 and -375:

Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

- This language means that the affected offenders, in addition to simply parole consideration, are no longer to be considered 85% offenders. See Bolin v. S.C. Dep't of Corrections, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016). **However**, third drug offenders are only non-85% offenders if all their prior offenses are simple possession-level offenses.

Hayes v. State and Probation Violators

- Post-conviction relief (PCR) case filed by Norman Hayes, who claimed his sentence was “expired” because he was not given credit for time he spent in jail prior to receiving a probationary sentence
- The South Carolina Court of Appeals ultimately agreed with Mr. Hayes, and the Supreme Court finalized the Court of Appeals’ opinion in November 2016.
- This case applies to inmates who come to SCDC on probation violations. It says that these inmates should receive jail time credit against their probation revocation sentences for the time they spent in jail prior to initially being given a probationary sentence.

Supervision After Release

- Parole – for regular parolable (not 85%) offenses
- Community Supervision Program – only for 85% offenders
- Supervised Furlough (mostly a relic of the past - 1983-1993)
- Supervised Reentry – S.C. Code 24-21-32

THE YOUTHFUL OFFENDER ACT

- S.C. Code 24-19-5 and the statutes that follow
- Generally, it's for offenders age 17 **but less than** 25 at time of conviction (not at time of offense)
- No violent crimes, with 2 exceptions:
 - burglary second degree violent
 - CSC with a minor in the 3rd degree (where V was over age 14 and the act was consensual)
- No 85% offenses allowed
- Youthful offenders are only supposed to get one bite at the YOA apple

Second Degree Burglary and the April 21, 2016 Amendment

- Prior to April 21, 2016, both violent and non-violent second degree burglary offenses carried a three-year day-for-day sentence under the Youthful Offender Act.
- On April 21, 2016, S.C. Code 24-19-10 (d) was changed to state that only second degree burglary violent carries a three-year day-for-day sentence.
- Savings Clause in the Act: because there was a savings clause in the Act that amended the statute, SCDC is required to look at the offense date to determine whether the three-year day-for-day sentence applies.

Powers of the Court Upon Conviction of a Youthful Offender

- Generally one of two things happen:
 - Impose a YOA sentence, but suspend it to probation
 - “probation” means adult probation with PPP
 - Impose an active YOA sentence “not to exceed 6 years”
 - Per Craft v. State, if the adult maximum sentence is less than 6 years, the adult maximum controls.
 - Example: possession of heroin carries a max of 2 years

Reception and Evaluation (“Intake”)

- SCDC staff are required to make a “complete study” of each youthful offender upon intake
- Intake should be completed in 30 days unless there are “exceptional circumstances”
- Males – go through intake at Kirkland R&E and then assigned to Trenton, Turbeville, or Allendale
- Females – go through intake at Camille Graham and then placed in the YOA program at Camille Graham

After Intake is Complete

- SCDC's youthful offender division uses our internal mandatory minimum guidelines to assign the youthful offender to a term of programming.

 - Generally 6 months, 9 months, 18 months, or 3-year mandatory minimum for burglary second degree
 - After serving the assigned term, the youthful offender is conditionally released to YOA parole ("intensive supervision" or "conditional release") for a period of one year
 - If offender is non-compliant, per statute, SCDC can keep a youthful offender up to 4 years in our discretion. Such an offender must be conditionally released at the 4-year mark.
 - Jail time is applied to "back up" the entire statutory period, EXCEPT for three-year day-for-day sentences – we apply the jail time to reduce the three-year period.
 - Example: for PWID cocaine: offender receives a 6-month term. Offender comes to intake for about a month and then begins his 6-month term. Any jail time credit would reduce the entire statutory period we have jurisdiction over the offender, but would not be applied to reduce the 6-month programming term.

Violations of Conditional Release

- An offender who violates the terms of conditional release (also called YOA parole or intensive supervision) can be returned to SCDC custody any time before expiration of the 6-year statutory period we have jurisdiction over the offender
- An offender accused of a violation has an administrative review where a panel decides whether to revoke the conditional release and return the offender to custody or continue the offender on conditional release

Unconditional Discharge

- Complete release from our custody and supervision in the community
- Usually occurs well before the 6-year period for compliant offenders
 - A youthful offender CAN be unconditionally discharged one year after being conditionally released.
 - A youthful offender MUST be unconditionally discharged six years from the sentence start date (backed up by any jail time credit).
 - Probationary sentences (suspended YOAs) that are later activated: six-year total period still begins on sentence start date (backed up by jail time credit).

Expungement of YOA Sentences

- **S.C. Code 22-5-920 – Amended Effective December 27, 2018:**
- Prior to the 12/27/18 amendment, the statute said that if a youthful offender has no other convictions in the five-year period following unconditional discharge, the offender can apply for expungement.
- The 12/27/18 amendment added that an offender seeking expungement cannot have had any convictions, including out-of-state convictions, during the service of the YOA sentence and for a period of five years following completion of the sentence.
- The 12/27/18 amendment also broadened the number of offenses that are eligible for expungement: “For purposes of this section, any number of offenses for which the individual received a youthful offender sentence at a single sentencing proceeding for offenses that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.”
- Specific questions about expungement should be directed to Adam L. Whitsett, General Counsel at SLED.

The “Non-Conforming” YOA Sentence

- Non-conforming means the offender was not statutorily eligible for a YOA sentence, but the sentencing judge ordered a YOA anyway.
- We typically keep nonconforming offenders for a minimum of 36 months (3 years).
- We also have to try our best to keep these offenders separate from our conforming youthful offenders due to the violent nature of their offenses and the potential danger they pose.
- **IN SUM:** Please don't condone illegal YOA sentences.

The Shock Incarceration Program

- NOTE: The Shock program is NOT just for youthful offenders, but is often used in conjunction with YOA sentences.
- Shock is for any offender with a non-violent, non-85% sentence who is under the age of 30 at the time of admission to SCDC and is eligible for parole in two years or less. The offender cannot have any prior SCDC commitments.
- Shock is a 90-day program with a focus on personal accountability, discipline, skill development, community service, and character development. Daily physical activity is required.
- At the end of the 90 days, the offender is released to parole supervision by PPP. (NOTE: The parole supervision lasts for the duration of the offender's potential incarcerative sentence!)

Remote County Releases

- Remote county release is available for offenders who receive sentences in excess of 90 days, but the sentences are already complete due to the amount of time they spent in the county detention center.
- These offenders are eligible to be released directly from the county detention center if the detention center faxes the appropriate paperwork to SCDC's Intake Center (Kirkland R&E) and receives confirmation back from SCDC that the inmate's sentence is already satisfied. Usually takes less than 1 day to process out.
- Please encourage your county jail to utilize this process next time you have a defendant in this scenario.

QUESTIONS?

- PLEASE CONTACT ME IF YOU HAVE ANY QUESTIONS RELATED TO SENTENCING.
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