

**Doing Time in Nevada****by Linda Bell, Lori Teicher, Pam Ramage, Terri Lewis and Tori Garrison**

In the non-capital habeas unit of the Federal Public Defender's Office, calculations of time and parole eligibility are frequently important aspects of our cases. In dealing with the prison system and the parole board, we have learned many interesting things about how it really works. This knowledge will be valuable for all criminal practitioners, though, even if you do not do any post-conviction work. It may change the way you negotiate cases or argue at sentencing.

Much of this information was presented at a recent CLE, of the same title of this article. Bennie Mc Ginnis, Correctional Case Records Manager for NDOC, and Parole Board Commissioner Tammy Bass spoke at the CLE. We are grateful to their help in gaining a better understanding of these issues.

**I. Time Calculations on Prison Sentences**

Knowledge of how the time is calculated by the prisons is a very useful tool for advising clients of the potential consequences in their case. It is important to keep in mind that calculating time is complicated, and when rules change, they are often imposed retroactively.

**A. Minimum and Maximum Sentences**

The Nevada sentencing scheme put in place in 1995 requires in most cases for the court to impose sentences with a maximum release date and a minimum parole eligibility date. Parole eligibility may not exceed forty percent of the maximum sentence, although it may be less than that. Consequently your client will end up with a sentence range of two numbers. For example, if the statutory penalty for a crime is one to ten years, the maximum sentence the client could receive is ten years, with parole eligibility at four years (or less, down to twelve months). The minimum sentence the client could receive is thirty months, with parole eligibility at twelve months.

- Sentence minimums are only for parole eligibility, not discharges. (That is, a twelve to thirty month sentence means that the client is serving a sentence of thirty months, but eligible for parole after serving twelve months.)
- Prior to July 1, 1995, parole eligibility was calculated at one-third of the sentence minus credits. Ex.: On a ten year sentence, parole eligibility would be at three years minus any credits.

**B. Calculating Time: What Comes First?**

Your client's sentence, the order of the charges on the JOC, and whether counts run concurrently or consecutively all factor into which charge begins to run first, and when your client will be eligible to appear before the parole board.

- The controlling sentence to determine parole eligibility date (PED) is the longest sentence. If the sentences run consecutively, they are served in order of how the JOC reads. If the sentences run concurrent, the sentence with the longest PED

**EXHIBIT G** Pardons

Document consists of 8 pages

☒ Entire document provided.☐ Due to size limitations, pages \_\_\_\_ provided.

A copy of the complete document is available through the Research Library (775/684-6827 or e-mail [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us)). Meeting Date: March 21, 2006

controls.

- As of the last legislative session, a sentence of life without the possibility of parole (LWOP) has all precedence over all other counts. This changed in the last legislative session is being applied retroactively. This means that a client with an LWOP sentence will never go to a parole board on any other charges, and will never begin serving any time on other consecutive charges. All time calculations in the computer system have been changed to reflect the new law.
- Use of a deadly weapon and similar enhancements (including gang and victim over 65) are always consecutive.
- When concurrent, the longest parole eligibility date and longest discharge date controls.

#### C. Good Time and Work Time

Everyone in custody gets credit for the time that is actually served, but they also receive credit for days not actually spent in prison. That time is given as an incentive for good behavior and working.

- “Credit for time served” is credit for actual days in custody prior to the sentencing. These credits are subtracted from the parole eligibility date (the minimum sentence) to determine when a person in custody is eligible for parole.
- The terms “good time” and “stat (statutory) time” refer to the same credits. These are the statutorily provided credits for good behavior. Currently, good time credits are earned at a rate of ten per month. These credits may be taken away in a disciplinary proceeding or in a parole revocation proceeding. Upon revocation on a mandatory parole, and under certain other circumstances these credits must be taken away.
- “Work time” is different from “good time.” Work time credits are earned monthly and applied to credit history on a monthly basis. One day of work equals one credit. Maximum, medium and close custody inmates may earn up to ten work credits per month. Minimum inmates and trustees may earn as many as twenty credits per month. Work credits change as the inmate’s level of custody changes. A prisoner housed out of state may still earn work credits so long as the prisoner is working. Once earned, work time credits cannot be taken away.
- Inmates receive good time while in the jail awaiting trial at the same rate as if they were already at the prison. They do not receive work time credits while in jail. So for example, the judge sentences a client to twelve to forty-eight months. The client spent sixty days in CCDC before sentencing. The client’s parole eligibility date would be twelve months less sixty days. The client would also receive twenty days good time credit toward the ultimate sentence of forty-eight months, and then would earn good time and work time credits off of the forty-eight month sentence while in custody.
- Prisoners who cannot work due to being placed in administrative segregation do

not earn work time credits. They do, however, earn statutory good time credits.

- People in drug court or on house arrest through the prisons, continue to get work and good time credits.
- All good time and work time credits come off the maximum sentence. Good time and work time credits do not change the parole eligibility date. As a result client with a sentence of twelve to thirty months will actually serve twelve months before the client is eligible for parole. The good time and work time credits will be subtracted from the thirty months, reducing the time the client has to discharge the sentence completely, whether in custody or on parole. An inmate with a life sentence does not actually receive any good time or work credits.
- All discharge dates are projected based on the assumption that the inmate is working. Ten work credits per month are figured into the discharge date. The projected date is adjusted continually from the time of sentencing, depending on actual work, good time credits and custody status.

#### D. Errors in the Judgment of Conviction

The Judgment of Conviction (JOC) is the only document used by the prison system for computing time. Consequently, it is critical for the defense lawyer to ensure that the JOC is both clear and correct.

- If there is an error on the JOC, it has to be amended by the court. The time keeper at the prison must then be sent a certified copy of the signed, amended JOC for revisions in the client's sentence structure. It is a good idea to check the NDOC website to make sure that the sentence accurately reflects what the court intended.
- Credit for time served at time of sentencing has to be specified in the JOC. If a client spends time in jail that is not reflected in the JOC, the client will not get credit. The prison does NOT use the PSI to calculate jail credit. If an amended JOC is done, make sure it includes all credit up to the date of the JOC, or the client will not receive all credit that he or she is due.

## II. Parole

The parole Board conducts 7,000 hearings per year, and the parole rate is 53%. Recidivism is 48%. (To get Parole Board stats, you can contact the parole board through their web site at <http://www.parole.nv.gov> ) Parole eligibility is a critical aspect of decision making in evaluating negotiations. After all, it is usually the bottom line for the client - when will he or she have a chance of getting out? As a criminal defense practitioner, knowledge of how the parole system works also allows you to better advise your client regarding how to achieve parole. If you have questions on a particular case, you may want to call the parole board - the only letters the Parole Board can answer are those written by the inmate.

#### A. The Nevada State Sentencing Guidelines

So you went to law school because you never would have made it through

college calculus? You avoid the federal sentencing guidelines like the plague? Sorry, pull out your calculator. Little may you have known, but Nevada has its own secret sentencing guidelines that are put in place by the parole board. These guidelines are used in ninety percent of the cases to determine parole eligibility. The parole standards and the parole standards worksheet follow this article.

- Each person who appears before the parole board receives a score called GMR - Guideline Recommended Months. The GMR is a result of points based largely on criminal history (convictions, incarcerations and failures on supervision), and also looks at the circumstances of the offense including drug use, victim impact, use of weapons, and whether the person was working at the time of the offense.
- Once the Parole Board figures out points based on the client's history, the figure is discounted based on the percentage of the maximum sentence given by the court. For example, if the court gave 50% on a sentence, i.e., twelve to sixty months on a one to ten year possible sentence, the Parole Board also reduces the score by 50%. This reduction is called "Court Action."
- After calculating those figures, the board adds points for disciplinary problems in prison and subtracts points for disciplinary credits and programming. A prisoner may only get three points subtracted for good behavior, but may lose up to ten for bad behavior. The Parole Board applies credits by going back three years from the inmate's date of eligibility.
- The score is then looked at in light of the severity level of the crime. Severity level is given a letter grade - A1 through D/E. This corresponds to the statutory designation of the felonies. For A and B level felonies, the sentence structure determines sub-categories. For example, A1 is any felony with a twenty year or more minimum.
- Once the score and severity levels are determined, the form has a chart that gives the GRM, which determines the client's eligibility for parole.
- For example, let's say you have a client who was charged with multiple armed robberies. He pled to one count of robbery with use in a case where the victim was extremely traumatized. He was not working at the time. He had one prior burglary, for which he spent one year in prison after failing probation, and two prior DUIs, each with jail time. He was on meth at the time of the robbery. He received a sentence of two to ten years, plus a consecutive two to ten for the use enhancement. He is up for parole on his first sentence. He's gone through an alcohol awareness program, but done no other programming. He's had one major write up for a fight and two minors for rule violations.

The client's severity level would be B2

He would receive thirteen points for criminal history:

Misdemeanor (non-violent)	2
Felony (non-violent)	3
Prison	2
Jail	2
Supervision Fail	3
Alcohol Convictions	1

He would receive fifteen points for the offense:

Drugs	2
Use of Weapon	6
Mental Impact to V	4
No employment	3

He would have a subtotal of twenty-eight points. This would be reduced to eighteen points because the court sentenced him to sixty-six percent of the maximum possible sentence

He would then receive four points for disciplinary action

Major	2
Minor	2

He would receive one credits for programming.

Thus, his total points would be twenty-one points.

With the B2 severity level, his GMR would be 48 to 66 months, so the client would more than likely not receive parole on his first sentence until he had done another two years on his first sentence. What this means is that in all likelihood the client will actually serve at least eight years before he is eligible for parole - double the amount he thought it would be through negotiation.

An interesting note - if the court had sentenced to two to seven and a half on each count, instead of two to ten, the GMR would have been 30 to 48 months.

- The Parole Board does have the power to deviate from the point system both downward and upward. By example, in a recent quarter the board deviated upward in over a hundred cases and deviated downward 121 times. Deviations either way require the board to provide a justification. The board deviates in only about ten percent of cases, which means it follows the GMR ninety percent of the time.
- Not all parole hearings are videotaped, and that was something they proposed after the last budget cut. Tammy prefers live hearings. All house arrests, camps and drug court hearings are done in absentia.

## **B. Errors in Pre-Sentence Reports**

Errors in pre-sentence reports, particularly errors regarding numbers of arrests and priors have a significant impact on parole eligibility. Even if the judge says on the record that he or she will disregard a particular item in dispute at sentencing, the error will harm the client. It is critical to the client to have a PSI that correctly reflects information about his or her past.

- Letters regarding corrections on PSI reports should be sent to Carson City or the parole board won't see it. The letters must be accompanied by certified copies of judgments, or court pleadings from that jurisdiction which would show the error. Truly the best way to handle corrections is to make sure the PSI itself is fixed.

- Parole and Probation are the only ones who change a PSI. To have P&P change the report, particularly post-sentencing, will probably require a motion to the court with documentation showing the error.
- The Parole Board always goes by most recent PSI.

### **C. Programming**

Looking at the guidelines, programming in prison is perhaps the single most important thing a client can do to help achieve parole. Unfortunately, programs are limited, some clients are not eligible for some programs, and

- Nevada prison facilities don't all have the same programs. Medium custody prisons have the most programs. NSP has great programs, as does SDCC. Ely's programs are very limited.
- Some programs are just for younger clients. Prisoners over forty may encounter trouble finding programs.
- GHP (Going Home Prepared Program) is available for all violent offenders with the exception of sex offenders.
- People in prison on sex offenses have virtually no chance of making parole if they do not go through a sex offender program in prison. This can be very problematic for a client who maintains his or her innocence.
- College classes must be paid for by inmate or family.

### **D. Parole Hearings**

- The Board's ultimate charge is public safety. Clients should address their issues to a successful transition back into the community and why they are more likely than not to be successful.
- Prisons set the parole agenda, which is computer generated. Inmates are seen four months in advance of the date they are eligible for parole.
- Inmates are not represented during parole hearings, but are represented by counsel or an inmate law clerk during parole revocation hearings.
- At some parole hearings, the inmates do not attend at all. House arrest, camp, and drug court hearings are all held in absentia. Due to budget concerns, there is a growing trend for hearings to be conducted via video conference (especially from the more remote facilities of Ely and Lovelock), so the inmate may not attend the hearing in person.
- At Parole Board hearings, only the victims can speak. From the parole board website: "Only victims have the legal right to offer testimony during a parole

hearing. The board may solicit comments from other persons in attendance during the hearing but encourages anyone in support of or against parole provide their comments in writing and submit those to the board. Written comments will become a permanent part of the record and will allow other board members to review all available information”

- It is a good idea to have family members or attorney’s comments put in writing and mailed or faxed to the parole board. These letters, however, as well as letters from a prosecutor, pro or con, probably have less sway with the board than the victim statements.
- On a related note, victims may speak with the parole board privately if they choose. From the parole board website: “Information submitted to the board by a victim is maintained by the board and kept confidential by statute. Victims of crime may attend the parole hearing and offer testimony, or may schedule a meeting with a commissioner in one of the board offices prior to the hearing if the victim desires such input to be kept confidential.”
- Sex offenders, child abusers can’t be considered for parole until the inmate successfully gets past the psych panel. Parole Board has nothing to do with the psych panel. The Board only sees the psych report. Generally, a client who will not admit to an offense has no chance of making it through the psych panel.
- The nature of the initial plea (guilty pleas v. Alford pleas, nolo contendere) is not as significant as whether an inmate has completed several programs and has gained some personal insight. Work, education, and a good disciplinary record are also significant. The perception by the board members that the client is being honest also may assist the client in achieving parole.
- The Parole Board cannot make alterations in the length or structure of the sentence, i.e., consecutive to concurrent. The Pardons Board is the only body vested with authority to make those types of changes.
- It is imperative for the client to have a stable living situation to go to. Some inmates are paroled into residential programs or half-way houses, but these spots are difficult to come by. If a prisoner has family or friends who will provide a residence, Parole and Probation will investigate to ensure the living environment is appropriate. Inmates who desire to self-parole (not staying with family or in a half-way house) must show that they have enough money. This is not a guarantee the Board will allow it. Obviously, this is a rare circumstance.
- Mandatory Parole Release is a required parole during the last twelve months of a sentence. Any sentence under three years, consecutive sentences, or LWOP’s will not have an MPR (Mandatory Parole Release) date. The MPR is constantly moving forward with credits for stat and work time. A revocation on a mandatory parole mandates loss of good time credits.

#### E. "Dumps" on Parole

When a prisoner comes up for parole, if the parole board denies parole, the prisoner is given a length of time that he or she must wait to reappear before the board. This is known as a "dump." Generally, dumps are from one to three years.

- There is no real criteria for parole dumps. From the parole board web site: "The Board can deny parole for periods of up to three years. If ten or more years remain on an inmate's sentence, the board may deny parole for up to five years (NRS 213.142). The dump depends on inmate presentation, victim input and programming.
  - This is a very interesting issue, as NRS 213.142 was passed in 1995, but is now being applied retroactively to clients with offense and conviction dates prior to 1995.
- The prisoner may not be dumped further than their expiration date (the maximum sentence minus any good time or work time credits).
- The Northern Nevada Board tends to be more conservative than Southern Nevada, and gives longer dumps on parole eligibility.

#### F. Lifetime Supervision

In 1995, the Nevada Legislature instituted lifetime supervision following completion of a sentence and parole for certain sex offenses. (NRS 176.0931) Whole teams of P&P are devoted to lifetime supervision monitoring, but the program does not have enough years in to see how it's working.

- Lifetime supervision is being applied retroactively to sex offenders convicted before 1995.
- People can be convicted for a new offense if they violate lifetime supervision conditions.

Even for practitioner who do not do post-conviction work, the time calculation and parole process has significant impact. The deal you may be offered might not be such a good deal after all. It is a good idea to do a rough calculation of parole eligibility for your clients so you can tell them what their sentence really means.

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