New York Should Expand its Good Time and Merit Time Programs

New York is considering a set of sentencing reforms that are a critical step towards ending mass incarceration in the state. One of the reforms is expanding the use of good time and merit time, which allow people to earn time off their sentences for good behavior and participating in rehabilitative programs. This document offers recommendations for how New York can make its programs fairer and more accessible to provide reentry preparation, promote public and prison safety, and save money, among other proven benefits.

Early release programs incentivize people to follow facility rules and engage in rehabilitative programming. New York's good time laws reward good behavior with time off maximum terms.[1] New York's Merit Time Program—a.k.a. "earned time"—allows people to earn time off minimum sentences by completing a work and treatment program, as well as vocational, educational, and substance use programming or community service.[2]

These programs reduce the prison population, which saves significant money. In a study of New York's Merit Time Program from 1997 to 2006, researchers found that approximately 24,000 people were released on average six months early.[3] Over that period, the program led to operational cost savings of $384 million.[4]

These programs also increase public safety and break the cycle of arrest.[5] The same study found that people who earned merit time release returned to custody approximately 7 percent less frequently than the rest of the released population.[6] Research shows that longer sentences do not make us safer.[7] Nor does keeping a person in prison reduce their likelihood of re-arrest. Rather, time in prison often leads to more criminal behavior, especially in the absence of rehabilitative programming.[8]

Recommendations for improving New York's good time and merit time programs:

Recommendation 1: Allow everyone to access merit time programming.

Most people can't benefit from merit time. As of December 2022, 74 percent of New York's prison population (23,155 people) was ineligible for merit time sentence reductions.[9] By limiting participation to people serving sentences for nonviolent offenses, New York wrongly assumes that a person who commits a violent offense is less able to be rehabilitated.[10] It is also inconsistent with the New York Department of Corrections and Community Supervision's (DOCCS) mission to ensure that "individuals under its custody are successfully prepared for release."[11] For justice and public safety, New York must start viewing rehabilitation as its obligation and stop treating its Merit Time Program as a "privilege.".[12]

Recommendation 2: Increase sentence reductions for good time and merit time.

New York's good time and merit time programs trail other states in calculating sentence reductions (i.e., allowances), including several traditionally conservative states.[13] New York should institute a model that provides for allowances that are a "day-for-a-day" at minimum, as do states like Arkansas and Oklahoma. Under this type of framework, each person is credited with a day off their sentence for each day they maintain a positive disciplinary and programming record.

Recommendation 3: Accrued good time sentence reductions should be permanent.

Under the current law, earned sentence reductions are not secure. DOCCS officials have discretion to withhold, forfeit, or cancel allowances for "bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned."[14] Critically, there is no time restriction on this policy, allowing corrections officials to cancel credits years after they are earned. To truly incentivize "good institutional behavior," New York must allow its good time credits to become permanent—either each calendar year or on a rolling basis for the preceding twelve months. This will limit the possibility of vindictive cancellations and provide people with obtainable and reliable rewards for positive behavior.

No one should leave prison less equipped for life outside than when they entered. With these recommendations, New York can reduce its prison population while simultaneously lowering recidivism, increasing public and prison safety, and redirecting taxpayer money towards proven evidence- and community-based initiatives that enhance long-term community safety.

Notes

[1] N.Y. Corr. Law § 803, perma.cc/SW55-VFD5. Because good time allowances reduce the maximum term of imprisonment, these allowances are available to everyone except those serving a sentence with a maximum term of life.

[2] Ibid.; See also New York State Department of Corrections and Community Supervision (DOCCS), "Earned Eligibility / Merit Time / Presumptive Release / Supplemental Merit Time / Limited Credit Time Allowance Programs," doccs.ny.gov/earned-eligibility-merit-time-presumptive-release-supplemental-merit-time-limited-credit-time, accessed January 16, 2023.

[3] State of New York Department of Correctional Service (DOCS), *Merit Time Program Summary October 1997 - December 2006* (New York: DOCS, 2007), iii, 20-27, perma.cc/APD8-BVA8.

[4] Ibid., ii. Those savings were based on the then-average "maintenance cost" per person per year of $29,000. As of 2015, the average cost per person in New York was nearly $70,000, meaning that the merit time program has potential for greater savings today. See Chris Mai and Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010-2015* (New York: Vera Institute of Justice, 2017), 7, perma.cc/PZ6N-64NY.

[5] DOCS, "Merit Time Program Summary," 2007; see also John H. Esperian, "The Effect of Prison Education Programs on Recidivism," *Journal of Correctional Education* 61, no. 4 (2010), 316-34, 323-24, jstor.org/stable/23282764; and Grant Duwe and Makada Henry-Nickie, "Training and Employment for Correctional Populations," in *A better path forward for criminal justice: A report by the Brookings-AEI Working Group on Criminal Justice Reform* (Washington, DC: Brookings Institute & American Enterprise Institute, 2021), 59-60, perma.cc/2WKZ-G7G8.

[6] DOCS, "Merit Time Program Summary," 2007, iii, 20-27. After one year, merit time approval releasees had return rates of 11 percent, compared to 18 percent for all other releasees. After two years, rearrest rates increased to 23 percent and 31 percent, respectively. And after three years, the recidivism rates were 31 percent and 39 percent, respectively. Graduates of the Shock Incarceration Program, "a six-month program of intensive

physical training, educational programming, counseling and drug treatment that offers inmates the possibility of early release," (p.17) comprised the only group of releasees with a lower return to custody rate than merit time releasees.

[7] Daniel Nagin, "Deterrence in the Twenty-First Century: A Review of the Evidence" (Pittsburgh, PA: Carnegie Mellon University, 2013), 7-8, doi.org/10.1184/R1/6471200.v1. See also Michael Cholbi, "Harsh Justice: Why Doesn't Increasing the Severity of Punishment Lead to Less Crime" *Psychology Today*, September 13, 2015, perma.cc/JH9V6U4W.

[8] Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer* (New York: Vera Institute of Justice, 2017), 2, 9 (n.23), perma.cc/J6NH-HL3L; and National Institute of Justice, "Five Things About Deterrence," June 5, 2016, perma.cc/59A4-EWZ4.

[9] New York DOCCS, "DOCCS Fact Sheet - December 1, 2022," December 1, 2022, 4, perma.cc/V4FS-E3V3. Under New York law, people who are ineligible for merit time are instead eligible for the Limited Credit Time Allowance, which provides participants with a maximum benefit of six months off their sentence—far less significant than the percentage-based reductions afforded all other incarcerated people. This represents a massive, missed opportunity: according to DOCCS, the very premise of merit time is that "individuals successfully participating in assigned programs will be more likely to make a successful transition to their family and community upon release." See DOCCS, "Earned Eligibility / Merit Time / Presumptive Release."

[10] Importantly, in the study of New York's merit time program, people released following sentences for violent felony offenses had lower recidivism rates than every group of releasees except merit time releasees and Shock Graduates. See DOCS, "Merit Time Program Summary," 2007, iii, 20-27.

[11] DOCCS, "Vision & Mission," from "The Departmental Mission," doccs.ny.gov/departmental-mission, accessed January 16, 2023.

[12] 7 CRR-NY Section 280.1, perma.cc/68U8-WE5U.

[13] National Conference of State Legislatures, "Good Time and Earned Time Policies for State Prison Inmates," January 2016, perma.cc/DP3T-XHNM. For example, Alabama, Nebraska, and Oklahoma all allow certain incarcerated people to earn more than 50 percent reductions on their sentences.

[14] N.Y. Corr. Law § 803, perma.cc/SW55-VFD5.