

# Big changes to Davidson jail work credit policy raise concerns



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(Photo: Samuel M. Simpkins / File / The Tennessean)

Amid concerns over the sweeping change to how Davidson County jail inmates will earn work credit on their sentences, Sheriff Daron Hall responded by asking judges and prosecutors to adjust their logic in sentencing.

After the Davidson County Sheriff's Office distributed a notice about the policy change last week, the sheriff received criticism from defense attorneys who fear the new policy will cause longer sentences at a greater cost to the city, jail crowding, confusion about inmate release dates and a burdensome sentence calculation process.

"If you really want them to serve 50 days, then sentence them to 50 days," Hall said.

The new 2-for-1 sentence credit policy, now set to go into effect Sept. 1, will make it so inmates will no longer automatically receive two days shaved off their sentence for every day they spend in jail after trial right away. Instead, the 2-for-1 credit won't count until an inmate actually begins work.

Hall said education and treatment programs also count toward receiving the credit. The new work credit system was going to kick in next week, but the Sheriff's Office moved the date back by one month to give administrators extra time to prepare for the new sentence calculations, a Sheriff's Office spokesman said.

The delay also came after a meeting Hall said took place Friday with District Attorney General Glenn Funk and Nashville public defender Dawn Deaner to address their concerns. "Sounds like he's kind of passing the buck to the court systems," said Ben Raybin, a private criminal defense attorney with Raybin & Weissman, P.C. Raybin argued that the new policy would have the effect of extending a lot of sentences because, according to Hall, it takes about two weeks to start working.

Additionally, inmates serving 30 days or less will most likely not be eligible under the new policy, according to the sheriff. Under the old policy, inmates sentenced to a month in jail would have gotten out of jail in 15 days, but no more.

With 822 people currently incarcerated on misdemeanor offenses costing the city about \$100 each day, extending sentences by even a few days for those not grandfathered into the old policy could become pricey.

But Hall said if it's an additional cost, it's only because judges and prosecutors aren't responding to the new policy with appropriate sentences.

"That's not my goal at all," the sheriff said. "It would only cost us more money if they don't adjust their logic."

Hall, a 27-year veteran, remembers when the county jail system was so crowded in the early '90s that it was impossible to administer 2-for-1 credits individually. Even if there had been enough jobs, no one could keep track of who was working and who wasn't. To address overcrowding, a decision was made to apply the work credit to everyone across the board, Hall said.

"We feel like we're fixing something that was broken a long time ago," he said.

Raybin said the old system worked because it was predictable and evenly applied. That way, lawyers could tell their clients with some certainty when they could expect to get out of jail.

Besides that predictability being important for inmates to make plans with their families and places of employment, Raybin noted that not knowing the length of a client's incarceration will be especially problematic because most criminal court cases end in a plea deal, in which people agree to do a specific amount of time in jail in exchange for pleading guilty without a trial.

For the bargain with prosecutors to be legal, a person must knowingly and voluntarily agree to the terms of a sentence. Raybin argued that a defendant's ability to "knowingly" enter into such bargains is reduced because the ultimate length of a sentence will be unclear, though he said the new policy does pass legal muster.

Ultimately, Hall said he can't guarantee there will be enough positions available for all those who wish to work or study. But he wants to be able to look the public in the eye and say that inmates are serving time for the crimes they've committed, not being sentenced to six months and getting out in three all while lying in their bunks, doing nothing.

The policy also is an effort to motivate inmates who refuse to get a job or go to work, Hall said, after offering more visitation days as incentive didn't appear to work. Tennessee law requires that inmates work or participate in some enrichment program while they're locked up.

"We are not taking anything away," Hall said. "What we're saying is individuals who don't work won't be rewarded."

And most of the inmates want to work or participate in an educational program. Hall noted that the work, which often benefits Nashville communities and nonprofits, is not work on a chain gang.

"They want to give back," Hall said.

Work and educational programs also help to reduce recidivism by improving inmates' abilities to transition back into society with job skills.

Regardless of whether inmates receive the work credit, they will still be able to reduce their sentence by a quarter with good behavior. Disabled inmates who health officials determine cannot work will receive the work credit anyway.

"... We're willing to go back to the table if there are problems," Hall said.

Raybin said he wishes the Sheriff's Office would have consulted with lawyers and people the policy affects beforehand.

For Raybin, at issue is not how much time someone serves for each crime, but how predictable that time is.

"Under this new system, time served will not only be based on crime, but on the availability of jobs and programs," he said.

He recommended an alternative to Hall's policy: Give the 2-for-1 credit to everyone automatically, and if they refuse to work or sign up for an equivalent program, then take the privilege away. That way, sentencing remains predictable enough for defense attorneys to counsel their clients on plea deals and inmates will not be punished for the potential lack of available jobs.