# DEALING WITH PRISONER MAIL

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**One of the burrs under the saddle of any Superior Court Judge, particularly a Senior Resident, is dealing with the headaches of prisoner mail. While it sometimes provides comic relief, prisoner mail can be at best annoying and sometimes scary. The purpose of this paper is to provide a brief outline of common scenarios presented by jail mail and furnish some resources for reasonable response.**

**<u>Setting the Tone.</u> Each judge has his or her own distinct writing style, particularly in correspondence. Some judges tend to respond individually and personally to jail mail. It is suggested, however, that an individualized and personal reply is not demanded by every letter from the hoosegow. In fact, one of the worst things you can do is establish a Pen Pal relationship with an inmate. You should keep in mind the fact that prisoners have far more time on their hands than you and would love to engage you in a letter-writing duel. Consequently, it is recommended that you handle commonly recurring issues through the use of form letters, keeping the correspondence on an impersonal level. Some judges recommend that the form letter approach be extended to the point that your name not even be included on the reply.**

**Included at the end of this manuscript is an Appendix containing a number of form letters that might be used in responding to the more common jail letters. These letters illustrate a variety of styles for responding, ranging from a single boiler plate style form to customized letters for common concerns. Also included is a sample letter for use by the Clerk's office in responding to prisoner requests. Because so much of your jail correspondence is directed initially to the Clerk's office, you should work with your clerks in setting up your forms and procedures so as not to duplicate your efforts in responding to prisoner mail. Your clerks can be extremely helpful to you in screening and responding to routine requests.**

**Keeping a Record.** **While the tone of your reply may hint that you never dealt with the correspondence personally, it is recommended that you keep a record of all correspondence. Chase Saunders, former Senior Resident in Mecklenburg County, tells of being served with a federal summons as a result of a "complaint" scribbled by a prisoner onto cigarette rolling paper. Judge McMillan treated the paper as a complaint setting forth a 1983 action. The federal summons made note of the fact that the Respondent was not protected by judicial immunity in the action. Fortunately for Judge Saunders, he had implemented a procedure of record keeping and was able to document how he had handled the original correspondence from the prisoner, also on rolling paper.**

**The record of correspondence can be as simple as a notebook containing a running log of correspondence received, with the date and manner of reply. If you have adopted a set of form letters, your log could simply note the date of your response and the form number of your response.**

**Sorting out Jail Credit.** **One of the primary concerns of prisoners is to insure that all time served is credited against the sentence imposed. Most prisoners ask about jail credit at the time of sentencing. Those who forget to ask about credit during court will send you a letter asking for credit at a later time. If you anticipate these questions and take an extra 10 seconds to determine jail credit at the time of sentencing, it could save you (or your assistant) the additional time required to respond to a letter at a later time.**

**G.S. 15-196.1 provides:**

> **"The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution as a result of the charge that culminated in the sentence. The credit provided shall be calculated from the date custody under the charge commenced and shall include credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending parole, probation, or post-release supervision revocation hearing: Provided, however, the credit available herein shall not include any time that is credited on the term of a previously imposed sentence to which a defendant is subject."**

**Note that the statute entitles a defendant to credit for time spent in confinement in any *State* institution. One might argue that a defendant would not be entitled to credit for pre-trial confinement outside the state of North Carolina, for example, a prisoner who is fighting extradition from another state. Although not binding on state trial courts, at least one Federal District Court has disagreed, holding that "State" institution means *any* state: *Childers v. Laws*, 558 F. Supp. 1284 (W.D.N.C 1983). Additional rules applicable to credits for pre-trial confinement appearing in the case law include the following:**

1. **"Special probation" qualifies as "confinement" under the statute, meaning that any active portion of a split sentence served must be credited against the sentence if the suspended portion of the sentence is later activated. *State v. Farris*, 111 N.C. App. 254, 431 S.E.2d 803 (1994)**

2. **"House arrest"(whether or not accompanied by electronic monitoring) does not constitute confinement in a state or local institution, and does not qualify as time that can be credited against a sentence under this statute. *State v. Jarman*, 140 N.C. App. 198 (2000).**

3. **IMPACT means confinement; notwithstanding past administrative practices to the contrary, the North Carolina Supreme Court has now settled the issue that a Defendant must be given credit for any time spent enrolled in IMPACT when later sentenced to an active term. *State v. Hearst*, 356 N.C. 132, 567 S.E.2d 124 (2002).**

**Subject to the above rules, credit for PTC is *mandatory.* Refusal to allow credit for time served while awaiting trial may constitute willful misconduct in office as well as conduct prejudicial to the administration of justice that brings the judicial office into disrepute such as to warrant removal from office. *In re Renfer*, 345 N.C. 382 (1997).**

***Query:*** **Is a Defendant entitled to credit for pre-trial confinement when being sentenced to life imprisonment? Under a former sentencing law, the Fourth Circuit concluded that a defendant was not entitled to credit for PTC when sentenced to life imprisonment, because a life sentence continues for the prisoner's natural life. *Wilson v. North Carolina*, 438 F.2d 284 (4th Cir. 1971). Under the Fair Sentencing Act, our appellate courts reached an opposite conclusion, finding that life sentences must be reduced by any time spent in pre-trial confinement. *State v. Dudley*, 319 N.C. 656, 356 S.E.2d 361 (1987). The reasoning of this approach becomes apparent with a later decision in *Robbins v. Freeman*, 127 N.C. App. 162, 487 S.E.2d 771 (1997) (noting that, under applicable statutes and regulations of the Parole Commisssion, a "life sentence" entitled a defendant to consideration for parole upon expiration of 20 years. With the enactment of the Structured Sentencing Act, life imprisonment once again means life imprisonment without parole. Notwithstanding the Wilson case, the safer course for the trial judge would be to grant credit for pre-trial confinement, even in the case of a sentence of life imprisonment without parole.**

**What about inpatient treatment programs? It would appear that allowing credit for time spent in confinement for treatment of a physical, mental or substance abuse problem would be discretionary if the confinement was voluntary; on the other hand, a Defendant ordered into a treatment facility might argue an entitlement to credit if the treatment program was "confinement in a State or local …institution."**

**<u>Concurrent and Consecutive Sentences.</u> The calculation of pre-trial credits can become incredibly complicated when a defendant receives multiple sentences. Some guidance for these determinations is provided by G.S. 15-196.2:**

> **"In the event time creditable under this section shall have been spent in custody as the result of more than one pending charge, resulting in imprisonment for more than one offense, credit shall be allowed as herein provided. Consecutive sentences shall be considered as one sentence for the purpose of providing credit, and the creditable time shall not be multiplied by the number of consecutive offenses for which a defendant is imprisoned. Each concurrent sentence shall be credited with so much of the time as was spent in custody due to the offense resulting in the sentence. When both concurrent and consecutive sentences are imposed, both of the above rules shall obtain to the applicable extent."**

**Prior to 1997, the Department of Correction utilized a practice of "paper parole" in determining release dates for persons sentenced to consecutive sentences. Under this practice, the DOC required an inmate sentenced to consecutive sentences to be paroled from the first sentence before being treated as having begun service of the second sentence. The Court of Appeals has disapproved of this practice, holding that G.S. 15-196.2 requires that consecutive sentences be aggregated and treated as a single sentence for purposes of determining an inmate's release date. *Robbins v. Freeman*, 127 N.C. App. 162, 487 S.E.2d 771 (1997).**

**<u>Procedure for Determining Jail Credit.</u> G.S. 15-196.4 sets out the following procedure for determining credits:**

1. **Upon sentencing or activating a sentence, the judge presiding shall determine the credits to which the defendant is entitled and shall cause the clerk to transmit to the custodian of the defendant a statement of allowable credits.**

2. **Upon committing a defendant upon the conclusion of an appeal, or a parole, probation, or post-release supervision revocation, the committing authority shall determine any credits allowable on account of these proceedings and shall cause to be transmitted, as in all other cases, a statement of the allowable credit to the custodian of the defendant.**

3. **Upon reviewing a petition seeking credit not previously allowed, the court shall determine the credits due and forward an order setting forth the allowable credit to the custodian of the petitioner.**

**In most cases, the determination of jail credit is handled administratively. If it becomes necessary to conduct an evidentiary hearing on the issue of credits, the burden of proving applicable credit is on the Defendant and is by a preponderance of the evidence.**

**<u>Effect of Consecutive Terms.</u> An interesting twist in sentencing is contained in G.S. 15A-1354(b), which reads:**

**In determining the effect of consecutive sentences imposed under authority of this Article and the manner in which they will be served, the Department of Correction must treat the defendant as though he has been committed for a single term with the following incidents:**

**(1) The maximum prison sentence consists of the total of the maximum terms of the consecutive sentences, less nine months for each of the second and subsequent sentences imposed for Class B through Class E felonies; and**

**(2) The minimum term consists of the total of the minimum terms of the consecutive sentences.**

**Example: A defendant pleads guilty to 3 counts of Armed Robbery is sentenced to 3 consecutive sentences, each being a minimum of 80 months and a maximum of 105 months in prison. After serving a serving a total of 297 months, the defendant writes to you, saying he is entitled to be released as a matter of law. What should you do?**

***The defendant is right! Under G.S. 15A-1354(b), the Department of Correction must subtract 9 months for each of the second and third sentences, so that the effective sentences become 80-105 + 80-96 + 80-96 months, meaning that he will have "maxed out" after 297 months.***

**Complaints about Counsel. A letter complaining about the defendant's lawyer usually signals trouble ahead, at least for the attorney. Defendant's counsel should be furnished with a copy of the letter so that appropriate action can be taken. When multiple letters are received from a defendant, it may prompt the judge to examine the defendant and counsel in open court to determine if there are legitimate problems, urging their cooperation and explaining the concept of *forfeiture of the right to counsel* if the complaints appear frivolous.**

**Letters Requesting a Speedy Trial. Whenever prisoner mail mentions "speedy trial," the judge should determine whether the prisoner is confined locally or in the Department of Correction. If locally confined, the request should be forwarded to defense counsel and the prosecutor for calendaring or other appropriate action. For a prisoner confined in DOC with other pending charges, special rules apply under G.S. 15A-711:**

***i.*** **A prisoner may request a speedy trial by compliance with the statute, which requires a written request filed with the Clerk *and served on the prosecutor in accordance with Rule 5(b) of the Rules of Civil Procedure.***

***ii.*** **Upon receipt of such request, the prosecutor must, within 6 months, proceed under subsection G.S. 15A-711(a) by requesting production of the defendant in court.**

***iii.*** **Failure to conduct a trial within the specified period *does not* entitle the Defendant to a dismissal of the charges. All that is necessary for compliance with the statute is that the prosecutor issue a writ to produce the Defendant in court within the specified time. *State v. Dammons*, 293 N.C. 263, 237 S.E.2d 834 (1977); *State v. Turner*, 34 N.C. App. 78, 237 S.E.2 318 (1977).**

**Requests for Transcripts. Any person requesting a transcript must show a *particularized need* for the transcript. *State v. Williams*, 51 N.C. App. 613, ___ S.E.2d ___ (1981). Unless the Defendant is indigent, arrangements must be made for payment according to the requirements of the Court Reporter (aka "payment in advance"). The defendant is not entitled to a duplicate copy of the transcript when represented by counsel. In dealing with requests for transcripts, keep in mind the following rules:**

1. **It is reversible error to retry a defendant without providing him with a transcript of his first trial. *State v. Reid*, 312 N.C. 322, ___ S.E.2d ___ (1984).**
2. **The transcript of prior proceedings resulting in a mistrial must be furnished if necessary to prepare for an effective defense, unless a substantially equivalent alternative is available. *Britt v. N.C.*, 404 U.S. 226 (1971); *State v. Rankin*, 306 N.C. 712, ___ S.E.2d ___ (1982) (denial of equal protection to refuse indigent defendant copy of transcript; offer of limited access to court reporter's notes for use during course of trial too little, too late).**
3. **The Defendant must be allowed "effective use" of transcript. *State v. Jackson*, 59 N.C. App. 615, ___ S.E.2d ___ (1982) (providing indigent's counsel less than 24 hours to review transcript held denial of effective use of transcript, equivalent to denial of effective assistance of counsel); *State v. McNeill*, 33 N.C. App. 317, ___ S.E.2d ___ (1977).**
4. **Providing a daily transcript during trial is not required. *State v. Phillips*, 300 N.C. 678, ___ S.E.2d ___ (1980).**

**Letters from Defendants and Family Members Requesting a "Sentence Cut"; Grievances about Prison Conditions. These letters, as well as a number of similar concerns generally raise only one issue: *Will it be a 2-pointer or a 3-pointer as it heads into the trash can?***

**Review of Prisoner Lawsuits for Frivolity. G.S. 1-110(b) imposes the duty upon Superior Court Judges to determine whether a complaint is frivolous "whenever a motion to proceed as an indigent is filed prose by an inmate in the custody of the Department of Correction…" Because of this statute, the Superior Court Judge is often asked to review for frivolity complaints filed in the District Court seeking absolute divorce. In *Bodie v. Connecticut*, 401 U.S. 371, 29 L.Ed.2d 113, 91 S.Ct. 780 (1971), the Supreme Court declared that marriage is a fundamental right and that the right to a court-awarded divorce flows from that right. Consequently, denial of access to the court to obtain a divorce may amount to a denial of due process. *Bodie,* 91 S.Ct. at 784.**

**"Quasi-MARS". What about a letter that sets out a meritorious claim, but fails to satisfy the procedural requirements of G.S. 15A-1420? For example, "I was sentenced in the aggravated range and there were no aggravating factors." The judge may be inclined to treat the letter as a Motion for Appropriate Relief and grant an evidentiary hearing. In doing so, the judge should consider the effect of the procedural bar resulting from that hearing under G.S. 15A-1419(a):**

**"grounds for the denial of a motion for appropriate relief…"**

**(1) Upon a previous motion made pursuant to this Article, the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so…**

**As noted in the Official Commentary, this provision embodies an intent that once a matter has been litigated *or there has been an opportunity to litigate a matter,* there will not be a right to seek relief by additional motions at a later date. In treating a letter as an MAR and granting an evidentiary hearing, a judge should at least be mindful of G.S. 15A-1419(a) and consider whether or not notice should be furnished to the defendant of the effect of the procedural bar, allowing any amendments to the MAR to be filed within a specified time.**

**Habeas Corpus. The remedy of habeas corpus merits a whole separate treatment, but is addressed briefly here in the context of jail correspondence. Habeas Corpus is an extraordinary remedy providing a method of challenging a court's jurisdiction to imprison or restrain an individual. A writ of habeas corpus may also issue when one is actually confined for a longer term of imprisonment than is legal. *State v. Green,* 85 N.C. 600 (1881).**

***BEWARE OF HABEAS CORPUS: look carefully at any request for Habeas Corpus.***

***See* G.S. 17-10: If any judge authorized by this Chapter to grant writs of habeas corpus refuses to grant such writ when legally applied for, every such judge shall forfeit to the party aggrieved two thousand five hundred dollars ($2,500). *Please Note: JUDICIAL IMMUNITY DOES NOT PROTECT YOU FROM THIS PROVISION!***

***See* G.S. 17-9: Any court or judge empowered to grant the writ, to whom such applications may be presented, shall grant the writ without delay, unless it appear from the application itself or from the documents annexed that the person applying or for whose benefit it is intended is, by this Chapter, prohibited from prosecuting the writ.**

**G.S. 17-4. When application denied.**

**Application to prosecute the writ shall be denied in the following cases:**

**(1) Where the persons are committed or detained by virtue of process issued by a court of the United States, or a judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the united States, or have acquired exclusive jurisdiction by the commencement of suits in such courts.**

**(2) Where persons are committed or detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such final order, judgment or decree.**

**(3) Where any person has willfully neglected, for the space of two whole sessions after his imprisonment, to apply for the writ to the superior court of the county in which he may be imprisoned, such person shall not have a habeas corpus in vacation time for his enlargement.**

**(4) Where no probable ground for relief is shown in the application.**

**The sole question for determination at a habeas corpus hearing is whether the prisoner is then being unlawfully restrained of his liberty. If it appears from the application itself or the documents attached that the imprisonment is lawful under G.S. 17-4, the petition may be summarily denied without a hearing*, if you are $2500 confident of your decision.***

# *SUPERIOR COURT JUDICIAL OFFICE*

***District 27B***
***Shelby, North Carolina***
***28150***

Date_____

To: _____

☐ _____ County Detention Center
☐ Department of Corrections
☐ Other

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I have been asked to respond to your recent letter and have taken the following action on your request or inquiry:

☐ Your request for jail time credit has been referred to the Clerk of Court, and you will be awarded the credit to which you are lawfully entitled;

☐ Your motion has been assigned to Judge_____ to review. A copy of the judge's order will be mailed to you once it is filed;

☐ Your request to modify your sentence cannot be granted;

☐ Your attorney has been sent a copy of your letter. Further questions should be directed to your attorney;

☐ Your request for a new court date has been forwarded to the Assistant District Attorney assigned to your case;

☐ The time for filing an appeal has expired. If you have further questions, you should contact an attorney;

☐ Pursuant to N.C. General Statutes, you may hire your own attorney or represent yourself if you wish, but you cannot choose which attorney is appointed to represent you.

☐ Other;

Sincerely,

Dear :

I have received your recent letter asking for a modification of your sentence. Once a term of court expires, I do not have authority to change a sentence. It is also inappropriate for me to take any action on a case as a result of ex parte contact with a party.

Sincerely,

Superior Court Judge

Cc: Clerk of Court for the court file

Dear :

I have received your recent letter asking for bond hearing. I am forwarding your letter to your attorney and by copy of this letter to the District Attorney, I am requesting that your case be placed on the next available calendar for consideration.

Sincerely,

Superior Court Judge

Cc: Counsel of Record
Clerk of Court for the court file

Dear :

I have received your recent letter, which I am treating as a Motion for Appropriate Relief. A copy of your letter has been forwarded to the District Attorney for a response. Upon the filing of a response by the District Attorney or upon the expiration of 20 days, whichever comes first, the matter will come back before a Superior Court Judge for further review.

Sincerely,

Superior Court Judge

CC: District Attorney
Clerk of Court for the court file

Dear :

I have received your recent letter. Please be advised that I am prohibited by the Code of Judicial Conduct from giving any legal advice, so I cannot answer your questions. You may wish to contact your lawyer to address your questions.

Sincerely,

Superior Court Judge

Cc: Clerk of Court for the court file

Dear :

I have received your recent letter. Because I am no longer assigned to _____ County, I am unable to resolve your questions. By copy of this letter, I am forwarding your correspondence to the Clerk of Superior Court in the county and to the Senior Resident Judge of the District.

Sincerely,

Superior Court Judge

Cc: The Honorable _____, Senior Resident
Clerk of Court for the court file

Dear :

I have received your recent letter asking to go to court to plead guilty on pending charges. By copy of this letter, I am forwarding your letter to the District Attorney, requesting that your case be placed on the next available calendar.

Sincerely,

Superior Court Judge

Cc: Counsel of Record
District Attorney
Clerk of Court for the court file

Dear :

I have received your recent letter concerning jail credit, and I am forwarding it to the Clerk with instructions that you be granted credit for all pre-trial confinement to which you are entitled. If there is a factual dispute as to these credits, then an evidentiary hearing should be scheduled for resolving these disputes.

Sincerely,

Superior Court Judge

Cc: Clerk of Court

Dear :

I have received your recent letter asking to go to court for trial. I am sending a copy of your letter to your attorney and to the District Attorney, so that they will be aware of your request for a speedy trial.

Sincerely,

Superior Court Judge

Cc: Counsel of Record
District Attorney

Dear :

I have received your recent letter expressing concerns about your court appointed counsel. I have forwarded your letter to your attorney so that these concerns may be addressed.

Sincerely,

Superior Court Judge

Cc: Counsel of Record