

Understanding Recent Changes to Pre-Sentence Credit Calculation
by
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Senate Bill x3 18, authored by Senator Denise Ducheny and effective as of January 25, 2010, amends several sections of the Penal Code pertaining to California prisoners' term of confinement.¹ Of the sections amended, section 4019 is of particular interest to criminal appellate attorneys because it deals with the amount of pre-sentence credits a convicted felon shall receive for time spent in local custody prior to delivery to state prison. As a consequence of this amendment, certain prisoners now are entitled to receive at least two days of credit for every two days served in a local facility prior to sentencing and arguably are entitled to receive one day of credit for every one day served in a local facility during that period.²

The sections of the bill that change the rate of accumulation of pre-sentence credit by certain defendants are summarized below:

Sec. 38 of the bill adds subdivision (e) to Penal Code section 2933. The new subdivision provides that a prisoner sentenced to state prison under the determinate sentencing scheme (Penal Code section 1170) is entitled to receive one day of credit for every day served in local custody *after* the date he or she was sentenced. Although this subdivision is aimed at accumulation of credit for time spent in local custody *after* sentencing, its language (e.g. "as specified in subdivision (f) of section 4019") suggests that the same rate of accumulation should apply to time spent in local custody *before* sentencing.

¹A list of the Penal Code sections amended is included *infra*.

²New subdivision (f) of Penal Code section 4019, *infra*, states that "a term of four days will be deemed to have been served for every two days spent in actual custody." This language suggests that defendants who spend an odd number of days in local custody do not receive Penal Code section 4019 credit for the last day of actual custody. However, new subdivision (e) of Penal Code section 2933, also created by this bill, suggests that the legislative intent is that one day of credit shall be received for every one day served in county jail "as specified in subdivision (f) of Section 4019." The bill's Legislative Counsel's Digest strengthens the argument that qualifying prisoners are entitled to one day of credit for every days spent in local custody. It states: "Existing law provides that for every 6 days served in a specified local detention center following an arrest and prior to the imposition of a prison sentence for a felony conviction, 2 days shall be deducted from his or her period of confinement, as specified. ¶ This bill would instead provide that certain prisoners *shall earn one day of credit for every one day served . . . in a local facility prior to delivery to the state prison.*" (Emphasis added.)

Sec. 50 of the bill amends Penal Code section 4019 directly. After the amendment, section 4019, subdivisions (b), pertaining to labor, and (c), pertaining to compliance with rules and regulations, provide that certain defendants sentenced to state prison shall receive one day of credit for every four-day period spent in a local facility. Counsel should note that under paragraph 2, added to each subdivision by the present bill, the old rule – providing for the deduction of one day for every six-day period spent in a local facility – remains applicable if the defendant (1) was presently convicted of a crime requiring sex offender registration, (2) was presently convicted of a serious felony pursuant to section 1192.7, or (3) has suffered a strike prior (serious or violent felony). (Note that neither subdivision applies under conditions set forth by Penal Code section 2933.1, that is, where the defendant was presently convicted of a violent felony pursuant to Penal Code section 667.5, subdivision (c).)

After the amendment, subdivision (f) of section 4019 provides that if all pre-sentence credits are earned under this section (as often is the case), a term of four days will be deemed to have been served for every two days spent in a local facility except that defendants falling within paragraph (2) of subdivisions (b) and (c) continue to receive credits as previously provided by section 4019 (i.e. six days deemed served for every four days of actual custody). In other words, calculation of pre-sentence credits does not change for defendants described in paragraph (2) of subdivisions (b) and (c).

Amended and New Sections of Penal Code Per SBx3 18
(New Sections in Bold)

154: debtor fraudulent removing, conveying, or concealing property; punishment

155: defendant or judgment debtor fraudulent removing, concealing, or disposing of personal property sought to be recovered

337.4: touting; grand theft

368: crimes against elder or dependent adults

422.7: aggravating factors for punishment

461: burglary; punishment

463: looting during emergency; punishment; probation; definitions; consensual entry

476a: checks, drafts, or orders on banks; insufficient funds; intent to defraud; punishment; evidence; severability; investigation fee

484b: diversion of funds received to obtain or pay for services, labor, materials, or equipment

484g: fraudulent use of access cards or account information

484h: furnishing thing of value upon presentation of unauthorized access card; falsely presenting evidence of access card transaction

487: grand theft defined

487b: grand theft; conversion of real property to personal property by severance

487c: petty theft; conversion of real property to personal property by severance

487e: grand theft; dog exceeding value of \$400

487f: petty theft; dog not exceeding value of \$400

496: receiving stolen property; punishment; swap meet vendors and others dealing in or collecting merchandise or personal property; damages and costs; penalties for attempted offenses

498: theft of utility services; definitions; presumptions; penalties

500: transmission of money to foreign countries; failure to perform acts; punishment

502: unauthorized access to computers, computer systems, and computer data

537: defrauding innkeepers, etc.

537e: removal or alteration of manufacturer's serial number or identification mark; purchase, sale, possession, etc.; disposition

550: false or fraudulent claims or statements; prohibited acts

551: automotive repair dealers; fraudulent acts

565: misdemeanor; use, possession, obliteration, or destruction of brand registrations by unauthorized persons

566: felony; use, possession, obliteration, or destruction of brand registrations by unauthorized persons

592: malicious injury to canals, ditches, flumes, or reservoirs

594.4: malicious mischief: vandalism; structure; noxious or caustic chemicals or substances

641.3: commercial bribery; monetary value; punishment; definitions

2932: denial of time credits; grounds; limitations; procedure; effect; review; criminal prosecutions; notice to prisoner

2933: worktime credits on sentences; amount; forfeiture; restoration; review

2933.05: added section pertaining to credit reduction for inmates who successfully complete specific programs

2933.2: murder; worktime credit; application; prohibition

2933.3: inmates assigned to conservation camps; enhanced worktime credit

2933.4: completion of in-prison drug treatment program; placement in 150-day residential aftercare program; discharge from parole supervision

2933.5: persons ineligible to receive credit

2933.6: placement in security housing or administrative segregation units for misconduct; work credits or good behavior credits; ineligibility

2934: waiver of time credits; purpose; procedure; effect

2935: heroic acts or exceptional assistance; sentence reduction

3000: legislative findings, declarations and intent; parole; discharge from custody; meetings with inmates; reconsideration of length and conditions; return to custody

3000.03: section added re: persons who the CDCR shall not return to prison, place on parole hold, or report any parole violation to the Board of Parole Hearings.

4019: application of section to certain prisoners; work performance and good behavior time credit

4600: demolishing prisons and jails: punishment; restitution