

FINDING ISSUES IN PROBATION REPORTS
AND OTHER KEY SPOTS IN THE RECORD
(FEB 2012 ADI MCLE)

I. PROBATION REPORTS (AND/OR CLOSING ARGUMENT) CAN BE A GOOD PLACE TO START REVIEWING A RECORD

- a) provides a succinct summary of facts and case (though, typically biased) so reader can know up front what facts probably will not be important to issues (e.g., those relating to count with acquittal)

II. PROBATION CONDITIONS

- a) **Note: Condition ordered is that orally stated by the court**
- b) **Two Basic Arguments:**
 - i) **Unreasonableness** (*People v. Lent* (1975) 15 Cal.3d 481)
 - ii) **Unconstitutionally Vague/Overbroad** (*In re Sheena K.* (2007) 40 Cal.4th 875)
 - 1) **Omits knowledge element** (e.g., *In re Sheena K.* (2007) 40 Cal.4th 875, 891-892)
 - 2) **Requires probation officer approval for residence, associates, employment, etc.** (e.g., *People v. O'Neil* (2008) 165 Cal.App.4th 1351; *People v. Bauer* (1989) 211 Cal.App.3d 937)
 - iii) **Note: Some cases discuss the two types of errors together. If there is no objection, it is important you frame your argument as one of unconstitutionality and separate out the relevant case analysis**

III. PRIORS

- a) **Confirm priors/enhancements properly applied**
 - i) **Did the Penal Code section 667.5(b) priors in fact apply?**
 - 1) sent to prison
 - 2) separate prison stay for each enhancement
 - 3) no five year washout period
- b) **If prior is not a CA prior, gather information (e.g., factual summary, case numbers, statute numbers, etc.) to begin investigation whether it fulfilled CA law**

c) Check for Risks

d) BUT the probation report often only is a good place to START, and actual case documents must be obtained online or from courts to definitively resolve questions.

IV. CREDITS - be sure client got ENOUGH and NOT TOO MANY credits

a) Confirm dates relied upon for credits calculation with the rest of the record

b) Basic calculation: Time between arrest date and sentencing date and add a day (because both days count)

i) Note: There are date calculator websites (see Date Calculator link under Practice Tools on ADI website)

c) Dual Credits for revocation time; “But For” Test of *People v. Bruner* (1995) 9 Cal.4th 1178, 1180 and *In re Joyner* (1989) 48 Cal.3d 487, 492, interpreting PC 2900.5(b) [“credits shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted.”]

d) Statutory interpretation / Retroactivity / Equal Protection - See CHART

V. SUBSTANTIAL EVIDENCE OF ABILITY TO PAY FINES/FEES

a) Attorney fees / some booking fees (*People v. Pacheco* (2010) 187 Cal.App.4th 1392 [Government Code sections 29550 & 29550.2] but maybe not if ordered under Government Code section 29550.1 because arrest is by city, special district, school district, community college district, college, university, or other local arresting agency whose officer or agent) / others (must look to statutory language for requirement)

i) **General question of whether objection is required** (at least for booking fees) is in CSC (*People v. McCullough* (2011) 193 Cal.App.4th 864, 867, S192513)

ii) **Special case of Attorney Fees** (Penal Code section 987.8): Regardless of *McCullough*, good argument no objection is

needed because of conflict of interest problem (*People v. Viray* (2005) 134 Cal.App.4th 1184, 1214)

1) Note: Courts should be finding ability to pay before imposing fees (for example, as long as probation finds ability to pay)

iii) Special case of Restitution Fines (Penal Code section 1202.4(c): Objection is required (court is to consider ability to pay but no ability to pay requirement)

PRESENTENCE CONDUCT CREDIT CHANGES TIMELINE

Original, 1982-1/24/10

4019 awarded 2-for-4 (1/3-time) credits to all Ds.

Exceptions: current violent felony (15% per 2933.1) and murder (no credits per 2933.2).

SB 18, effective 1/25/10

Amended 4019 to award 2-for-2 (half-time) credits.

Statute does not say if prospective only, causing some courts to hybridize (divide calculation btw pre and post-1/25/10 custody)
Exceptions: Registerable sex offender, strike prior, current serious felony (who remain subject to 2-for-4); current violent felony (15%) and murder (none).

SB 76, effective 9/28/10

1) Amended 4019 to return to 2-for-4 (1/3-time) presentence credits for Ds not committed to prison (per 4019(g), change prospective, applic. to crimes committed on or after 9/28/10);
2) Amended 2933 to award Ds committed to prison 1-for-1 (half-time) credits.
Exceptions: registerable sex offender, strike prior, current serious felony (who remain subject to 2-for-4); current violent felony (15%) and murder (none).

AB 17, operative 10/1/11

Consolidated in 4019 the credit provisions SB 76 split between 4019 & 2933. Amended 4019 to award 2-for-2 credits to Ds, whether sent. to jail or prison (per 4019(h)). Changes prospective only, applic to crimes committed on or after 10/1/11.
Exceptions: current violent felony (15%) and murder (none).

→ **Timeline** /1/25/10 /9/28/10 /10/1/11 →

Scenarios based on dates of operative events (O=Offense; S=Sentencing; F=Finality) and which statute applies:

- 1) O-S-F (Original 4019 applies, but argue K equal pro for AB 17 if it's more favorable)
- 2) O-S-----F (SB 18 applies if E arg prevails; but if have sex/serious/strike disqualifier, argue K equal pro for AB 17, which eliminated them)
- 3) O-----S-F (SB 18 applies; argue E&Z vs hybrid; but if have sex/serious/strike disqualifier, argue K equal pro for AB 17, which eliminated them)
- 4) O-----S-----F (Same as #3)
- 5) O-----S-----F (Same as #3; note cannot argue E for AB 17 because of its savings clause)
- 6) O-----S-----F (Same as #3; also, note the adverse change in SB 76 re Ds sent. to jail does not apply because of SB 76's savings clause and ex post facto)
- 7) -----O-----S (SB 18 applies; if have sex/serious/strike disqualifier, argue K for AB 17, which eliminated them); note, the adverse change in SB 76 re Ds sent. to jail does not apply because of SB 76's savings clause and ex post facto)
- 8) -----O (SB 76 applies; if sent. to jail or have sex/serious/strike disqualifier, argue K for AB 17, which eliminated them; note, cannot argue E or Z for AB 17 because of AB 17's savings clause)
- 9) -----O (If sent. to *prison*, straight applic of AB 17 ☺; if sent. to *jail* under realignment and credits are calculated under less favorable "prior law" (see 4019(h)), argue statutory construction/lenity for AB 17 [see Couzens & Bigelow 10/2011 credits article, p. 12]; also argue K for AB 17 calculation)

*E= *People v. Estrada* (1965) 63 Cal.2d 740: Absent savings clause, ameliorative statutory change applies to cases not yet final when stt. becomes effective.
*Z=*People v. Zarate* (2010) 192 Cal.App.4th 939, rev. gr. 5/18/11: Statute in effect on sentencing date governs credits calc., regardless of dates of custody.
*In re *Kapperman* (1974) 11 Cal.3d 542, *People v. Kemp* (2011) 192 Cal.App.4th 252, rev. granted: Equal protection requires ameliorative change in credits calculation be applied to all inmates, even whose cases are final.

APPENDIX TO PRESENTENCE CONDUCT CREDITS TIMELINE CHART

2/15/11

Cases on review

--*People v. Brown* (2010) 182 Cal.App.4th 1, rev. granted 6/9/10 (S181963): Does PC 4019, as amended by SB 18 to increase presentence custody credits, apply retroactively (does *Estrada* require retroactive application of SB 18)?

--*People v. Kemp* (2011) 192 Cal.App.4th 252, rev. granted, on hold pending *Brown* (S191112): Does equal protection per *Kapperman* require more generous credits provisions of SB 18 be applied to other inmates?

--*People v. Voravongsa* (2011) 197 Cal.App.4th 657, rev granted 8/31/11 (S195672), on hold pending *People v. Lara* (see below): Must a disqualifying prior under the SB 18 or SB 76 versions of PC 4019 be pled and proved?

--*People v. Lara* (2011) 193 Cal.App.4th 1393, rev. granted 5/18/11 (S192784): Does sentencing court have PC 1385 discretion to dismiss or strike a prior serious felony to avoid PC 4019 disqualifier for enhanced credits?

Resources

--Couzens & Bigelow, **Awarding Custody Credits After Realignment**
(http://www.courts.ca.gov/partners/documents/Credits_Memo.pdf)

--CCAP Conduct Credits Calculator (http://www.capcentral.org/criminal/credits_calc.asp)

--CCAP High Court Pending Issues page
(http://www.capcentral.org/high_court/pending_cal.aspx)

CONDUCT CREDITS CALCULATOR*

Calculating Presentence Conduct Credit Under Penal Code Sections 4019 and 2933 in the Third and Fifth Districts

Updated as
of: 12/2/2011

Heads-up note: The California Supreme Court has granted review to resolve a split in authority on this issue. (See, e.g., *People v. Brown* (2010) 182 Cal.App.4th 1354, review granted June 9, 2010, S181963; *In re Kemp* (2011) 192 Cal.App.4th 252, review granted April 13, 2011, S191112; *People v. Rodriguez* (2010) 183 Cal.App.4th 1, review granted June 9, 2010, S181808.)

Equal Protection? This chart does not address potential constitutional issues that may be appropriate for the individual case and/or defendant.

Print Instructions:

To print this chart, click the small print icon at the top right-hand corner of this page.

Formula for conduct credit based on time in county jail	Formula A (Six days deemed served for <i>four</i> days actually confined in county jail)	Formula B (Four days deemed served for <i>two</i> days actually confined in county jail)	Formula C (Two days deemed served for <i>one</i> day actually confined in county jail)
Math:	1. Actual days ÷ 4 = whole number quotient (Drop any remainder) 2. Whole quotient x 2 = conduct credit 3. Actual + conduct credit = Total credit	1. Actual days ÷ 2 = whole number quotient (Drop any remainder) 2. Whole quotient x 2 = conduct credit 3. Actual + conduct credit = Total credit	Actual days x 2 = Total credit
Authority:	Section 4019 prior to amendment eff. 1/25/10, then restored for the period from 9/28/10 through 9/30/11	A. Section 4019 from 1/25/10 through 9/27/10 B. Section 4019 from 10/1/11 to present	Section 2933 from 9/28/10 through 9/30/11, applicable only if state prison term was ordered executed

Recent Victory Cases:	<i>People v. Forest</i> , unpublished opn. <u>F061374</u>
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Qualifying Period Judgments that were final prior to January 25, 2010	Formula to Apply Third District: Formula B or Formula C (<i>In re Kemp</i> (2011) 192 Cal.App.4th 252, review granted April 13, 2011, S191112; <i>In re Bell</i> (Sept. 20, 2011, C066298) 2011 Cal.App.Unpub. LEXIS 7107 [unpublished decision].) Note: excludes defendants with a prior conviction for a serious or violent felony, defendants who are sentenced on a serious felony, and any person required to register as a sex offender; Formula A applies instead Fifth District: Formula A (<i>People v. Rodriguez</i> (2010) 183 Cal.App.4th 1, review granted June 9, 2010, S181808.)
Sentenced prior to January 25, 2010, but judgment not final as of January 25, 2010	Third District: Formula B or Formula C (<i>People v. Brown</i> (2010) 182 Cal.App.4th 1354, review granted June 9, 2010, S181963; <i>In re Kemp</i> (2011) 192 Cal.App.4th 252, review granted; <i>In re Bell</i> (Sept. 20, 2011, C066298) 2011 Cal.App.Unpub. LEXIS 7107 [unpublished decision]; <i>People v. Magee</i> (Sept. 29, 2011, C062719) 2011 Cal.App.Unpub. LEXIS 7461 [unpublished decision].) Note: excludes defendants with a prior conviction for a serious or violent felony, defendants who are sentenced on a serious felony, and any person required to register as a sex offender; Formula A applies instead Fifth District: Formula A (<i>People v. Rodriguez</i> (2010) 183 Cal.App.4th 1, review granted June 9, 2010, S181808..)
Crime committed prior to January 25, 2010, and sentenced after January 25, 2010, but before September 28, 2010	Third District: Formula B or Formula C (See <i>People v. Brown</i> (2010) 182 Cal.App.4th 1354, review granted June 9, 2010, S181963; <i>In re Kemp</i> (2011) 192 Cal.App.4th 252, review granted April 13, 2011, S191112; <i>People v. Collins</i> (June 21, 2011, C065681) 2011 Cal.App.Unpub. LEXIS 4632 [unpublished decision].) Fifth District: Formula B (<i>People v. Tasayco</i> (Sept. 28, 2011, F059961) 2011 Cal.App.Unpub. LEXIS 7381 [unpublished decision].) Note: excludes defendants with a prior conviction for a serious or violent felony, defendants who are sentenced on a serious felony, and any person required to register as a sex offender; Formula A applies instead.

<p>Crime committed between January 25, 2010, and September 27, 2010</p>	<p>Third District: Formula B or Formula C (See <i>People v. Adkins</i> (Aug. 4, 2011, C066935) 2011 Cal.App.Unpub. LEXIS 5868 [unpublished decision]; <i>People v. Grissom</i> (Aug. 16, 2011, C066580) 2011 Cal.App.Unpub. LEXIS 6164 [unpublished decision].)</p> <p>Fifth District: Formula B or Formula C depending on date of sentencing (See <i>People v. Tasayco</i> (Sept. 28, 2011, F059961) 2011 Cal.App.Unpub. LEXIS 7381 [unpublished decision; applying January 25, 2010, version of section 4019 because it was in effect at time of sentencing]; <i>People v. Lusk</i> (Oct. 13, 2011, F061201) 2011 Cal.App.Unpub. LEXIS 7794 [unpublished decision; applying September 28, 2010, version of section 2933 because it was in effect at time of sentencing on October 21, 2010].)</p> <p>Note: excludes defendants with a prior conviction for a serious or violent felony, defendants who are sentenced on a serious felony, and any person required to register as a sex offender; Formula A applies instead.</p>
<p>Sentenced to prison on or after September 28, 2010 for crimes committed before October 1, 2011 (includes sentences for crimes committed before September 28, 2010)</p>	<p>Both the Third District and the Fifth District: Formula C (<i>People v. Saylor</i> (June 15, 2011, C067035) 2011 Cal.App.Unpub. LEXIS 4521 [unpublished decision]; <i>People v. Grissom</i> (Aug. 16, 2011, C066580) 2011 Cal.App.Unpub. LEXIS 6164 [unpublished decision]; <i>People v. Lusk</i> (Oct. 13, 2011, F061201) 2011 Cal.App.Unpub. LEXIS 7794 [unpublished decision]; see also <i>People v. Millsap</i> (July 7, 2011, A130626) 2011 Cal.App.Unpub. LEXIS 5117 [unpublished decision; analysis of applicable law for crime that was committed September 11, 2010, and sentenced October 29, 2010]; <i>People v. Buryta</i> (July 27, 2011, E052095) 2011 Cal.App.Unpub. LEXIS 5545 [unpublished decision; analysis of applicable law for crime that was committed prior to September 28, 2010, and sentenced after this date].)</p> <p>Note: excludes defendants with a prior conviction for a serious or violent felony, defendants who are sentenced on a serious felony, and any person required to register as a sex offender; Formula A applies instead.</p>
<p>County jail inmates who are not sentenced to prison for crimes committed on or after September 28, 2010, and before October 1, 2011</p>	<p>Both the Third District and the Fifth District: Formula A (Penal Code § 4019, effective September 28, 1010.)</p>
<p>Crimes committed on or after October 1, 2011, to present</p>	<p>Both the Third District and the Fifth District: Formula B (Penal Code § 4019, operative October 1, 2011.)</p> <p>Note: does NOT exclude defendants with a prior conviction for a serious or</p>

	violent felony, defendants who are sentenced on a serious felony, and any person required to register as a sex offender.
Qualifier	Formula to Apply

*Chart by Gary McCurdy, CCAP Asst. Director, Kate Dashiell and Cynthia Sorman, CCAP Staff Attorneys. The authors wish to gratefully acknowledge the work of J. Richard Couzens, Judge (Ret.) and Tricia A. Bigelow, Presiding Justice, Court of Appeal, Second Appellate District, Div. 8, "Awarding Conduct Credits Following Enactment of 2011 Realignment," which provided invaluable guidance in pulling this chart together.

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§ 4019. Application of section to certain prisoners; work performance and good behavior time credit
West's Annotated California Penal Code [See Text Amendments] to January 24, 2010

Penal Code (Refs & Annos)
Part 3. Of Imprisonment and the Death Penalty (Refs & Annos)
Title 4. County Jails, Farms and Camps (Refs & Annos)
Chapter 1. County Jails (Refs & Annos)

This section has been updated. Click here for the current version.

Effective: [See Text Amendments] to January 24, 2010

West's Ann. Cal. Penal Code § 4019

§ 4019. Application of section to certain prisoners; work performance
and good behavior time credit

(a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction:

(b) Subject to the provisions of subdivision (d), for each six-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each six-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) Nothing in this section shall be construed to require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of any industrial farm or road camp.

(e) No deduction may be made under this section unless the person is committed for a period of six days or longer.

(a)

(f) It is the intent of the Legislature that if all days are earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody.

Credits

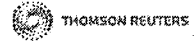
(Added by Stats.1976, c. 286, p. 595, § 4. Amended by Stats.1978, c. 1218, p. 3941, § 1; Stats.1982, c. 1234, p. 4553, § 7.)

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§ 4019. Application of section to certain prisoners; work performance and good behavior time credit
West's Annotated California Penal Code Effective: January 25, 2010 to September 27, 2010

Penal Code (Refs & Annos)
Part 3. Of Imprisonment and the Death Penalty (Refs & Annos)
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West's Ann.Cal.Penal Code § 4019

§ 4019. Application of section to certain prisoners; work performance and good behavior time credit

(a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(b)(1) Except as provided in Section 2933.1 and paragraph (2), subject to the provisions of subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(2) If the prisoner is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290), was committed for a serious felony, as defined in Section 1192.7, or has a prior conviction for a serious felony, as defined in Section 1192.7, or a violent felony, as defined in Section 667.5, subject to the provisions of subdivision (d), for each six-day period in which the prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c)(1) Except as provided in Section 2933.1 and paragraph (2), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and



regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(2) If the prisoner is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290), was committed for a serious felony, as defined in Section 1192.7, or has a prior conviction for a serious felony, as defined in Section 1192.7, or a violent felony, as defined in Section 667.5, for each six-day period in which the prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) Nothing in this section shall be construed to require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of any industrial farm or road camp.

(e) No deduction may be made under this section unless the person is committed for a period of four days or longer, or six days or longer for persons described in paragraph (2) of subdivision (b) or (c).

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody, except that a term of six days will be deemed to have been served for every four days spent in actual custody for persons described in paragraph (2) of subdivision (b) or (c).

Credits

(Added by Stats.1976, c. 286, p. 595, § 4. Amended by Stats.1978, c. 1218, p. 3941, § 1; Stats.1982, c. 1234, p. 4553, § 7; Stats.2009-2010, 3rd Ex.Sess., c. 28 (S.B.18), § 50, eff. Jan. 25, 2010.)

Footnotes

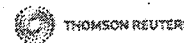
1 So in enrolled bill.

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SB 76
(4019)

§ 4019. Application of section to certain prisoners; work performance and good behavior time credit
West's Annotated California Penal Code Effective: September 28, 2010 to September 30, 2011

Penal Code (Refs & Annos)
Part 3. Of Imprisonment and the Death Penalty (Refs & Annos)
Title 4. County Jails, Farms and Camps (Refs & Annos)
Chapter 1. County Jails (Refs & Annos)

This section has been updated. Click here for the current version.

Effective: September 28, 2010 to September 30, 2011

West's Ann.Cal.Penal Code § 4019

§ 4019. Application of section to certain prisoners; work performance and good behavior time credit

<Section prior to amendment by Stats.2011, c. 15 (A.B.109), eff. April 4, 2011, operative no earlier than Oct. 1, 2011, and only upon the creation and funding of a community corrections grant program, and Stats.2011, c. 39 (A.B.117), eff. June 30, 2011, operative no earlier than Oct. 1, 2011, and only if Stats.2011, c. 15 (A.B.109), becomes operative. See, also, section as amended by Stats.2011, c. 15 (A.B.109), eff. April 4, 2011, operative no earlier than Oct. 1, 2011, and only upon the creation and funding of a community corrections grant program, and Stats.2011, c. 39 (A.B.117), eff. June 30, 2011, operative no earlier than Oct. 1, 2011, and only if Stats.2011, c. 15 (A.B.109), becomes operative.>

(a) The provisions of this section shall apply in all of the following cases:

- (1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding.
- (2) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding.
- (3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.
- (4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(b) Subject to the provisions of subdivision (d), for each six-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each six-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily



complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) Nothing in this section shall be construed to require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of any industrial farm or road camp.

(e) No deduction may be made under this section unless the person is committed for a period of six days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody.

(g) The changes in this section as enacted by the act¹ that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

Credits

(Added by Stats.1976, c. 286, p. 595, § 4. Amended by Stats.1978, c. 1218, p. 3941, § 1; Stats.1982, c. 1234, p. 4553, § 7; Stats.2009-2010, 3rd Ex.Sess., c. 28 (S.B.18), § 50, eff. Jan. 25, 2010; Stats.2010, c. 426 (S.B.76), § 2, eff. Sept. 28, 2010.)

Footnotes

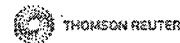
1 Stats.2010, c. 426 (S.B.76), eff. Sept. 28, 2010.

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SB 76
(2933)

§ 2933. Worktime credits on sentences; amount; forfeiture; restoration; review
West's Annotated California Penal Code § 2933 Effective: September 28, 2010 to September 30, 2011

Penal Code (Refs & Annos)

Part 3. Of Imprisonment and the Death Penalty (Refs & Annos)

Title 1. Imprisonment of Male Prisoners in State Prisons (Refs & Annos)

Chapter 7. Execution of Sentences of Imprisonment (Refs & Annos)

Article 2.5. Credit on Term of Imprisonment (Refs & Annos)

This section has been updated. Click here for the current version.

Effective: September 28, 2010 to September 30, 2011

West's Ann. Cal. Penal Code § 2933

§ 2933. Worktime credits on sentences; amount; forfeiture;
restoration; review

(a) It is the intent of the Legislature that persons convicted of a crime and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Secretary of the Department of Corrections and Rehabilitation pursuant to this section and Section 2933.05.

(b) For every six months of continuous incarceration, a prisoner shall be awarded credit reductions from his or her term of confinement of six months. A lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous incarceration. Credit should be awarded pursuant to regulations adopted by the secretary. Prisoners who are denied the opportunity to earn credits pursuant to subdivision (a) of Section 2932 shall be awarded no credit reduction pursuant to this section. Under no circumstances shall any prisoner receive more than six months' credit reduction for any six-month period under this section.

(c) Credit is a privilege, not a right. Credit must be earned and may be forfeited pursuant to the provisions of Section 2932. Except as provided in subdivision (a) of Section 2932, every eligible prisoner shall have a reasonable opportunity to participate.

(d) Under regulations adopted by the Department of Corrections and Rehabilitation, which shall require a period of not more than one year free of disciplinary infractions, credit which has been previously forfeited may be restored by the secretary. The regulations shall provide for separate classifications of serious disciplinary infractions as they relate to restoration of credits, the time period required before forfeited credits or a portion thereof may be restored, and the percentage of forfeited credits that may be restored for these time periods. For credits forfeited as specified in paragraph (1) of subdivision (a) of Section 2932, the Department of Corrections and Rehabilitation may provide that up to 180 days of lost credit shall not be restored and up to 90 days of credit shall not be restored for a forfeiture resulting from conspiracy or attempts to commit one of those acts. No credits may be restored if they were forfeited for a serious disciplinary infraction in which the victim died or was permanently disabled. Upon application of the prisoner and following completion of the required time period free of disciplinary offenses, forfeited credits eligible for restoration under the regulations for disciplinary offenses other than serious disciplinary infractions punishable by a credit loss of more than 90 days shall be restored unless, at a hearing, it is found that the prisoner refused to accept or failed to perform in a credit qualifying assignment, or extraordinary circumstances are present that require that credits not be restored. "Extraordinary circumstances" shall be defined in the regulations adopted by the secretary. However, in any case in which credit was forfeited for a serious disciplinary

infraction punishable by a credit loss of more than 90 days, restoration of credit shall be at the discretion of the secretary.

The prisoner may appeal the finding through the Department of Corrections and Rehabilitation's review procedure, which shall include a review by an individual independent of the institution who has supervisory authority over the institution.

(e)(1) Notwithstanding Section 4019 and subject to the limitations of this subdivision, a prisoner sentenced to the state prison under Section 1170 for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits pursuant to this article are applicable to the prisoner.

(2) A prisoner may not receive the credit specified in paragraph (1) if it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by, or has not satisfactorily complied with the reasonable rules and regulations established by, the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(3) Section 4019, and not this subdivision, shall apply if the prisoner is required to register as a sex offender, pursuant to Chapter 5.5 (commencing with Section 290), was committed for a serious felony, as defined in Section 1192.7, or has a prior conviction for a serious felony, as defined in Section 1192.7, or a violent felony, as defined in Section 667. 5.

(f) The provisions of subdivision (d) shall also apply in cases of credit forfeited under Section 2931 for offenses and serious disciplinary infractions occurring on or after January 1, 1983.

Credits

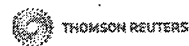
(Added by Stats.1982, c. 1234, p. 4551, § 4. Amended by Stats.1986, c. 1446, § 2; Stats.1988, c. 121, § 1, eff. May 31, 1988; Stats.1994, c. 90 (A.B.511), § 1, eff. June 6, 1994; Stats.1995, c. 557 (S.B.215), § 2; Stats.1996, c. 868 (A.B.2284), § 1.5; Stats.1996, c. 598 (S.B.1231), § 2; Stats.2009-2010, 3rd Ex.Sess., c. 28 (S.B.18), § 38, eff. Jan. 25, 2010; Stats.2010, c. 426 (S.B.76), § 1, eff. Sept. 28, 2010.)

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AB 17

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NOTES OF DECISIONS (201)

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§ 4019. Application of section to certain prisoners; work performance and good behavior time credit

West's Annotated California Penal Code Effective: October 1, 2011

Penal Code (Refs & Annos)
 Part 3. Of Imprisonment and the Death Penalty (Refs & Annos)
 Title 4. County Jails, Farms and Camps (Refs & Annos)
 Chapter 1. County Jails (Refs & Annos)

Proposed Legislation

Effective: October 1, 2011

West's Ann.Cal.Penal Code § 4019

§ 4019. Application of section to certain prisoners; work performance and good behavior time credit

Currentness

(a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

(6) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(b) Subject to the provisions of subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.



(d) Nothing in this section shall be construed to require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of any industrial farm or road camp.

(e) No deduction may be made under this section unless the person is committed for a period of four days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.

(g) The changes in this section as enacted by the act¹ that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act² that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

(i) This section shall not apply, and no credits may be earned, for periods of flash incarceration imposed pursuant to Section 3000.08 or 3454.

Credits

(Added by Stats.1976, c. 286, p. 595, § 4. Amended by Stats.1978, c. 1218, p. 3941, § 1; Stats.1982, c. 1234, p. 4553, § 7; Stats.2009-2010, 3rd Ex.Sess., c. 28 (S.B.18), § 50, eff. Jan. 25, 2010; Stats.2010, c. 426 (S.B.76), § 2, eff. Sept. 28, 2010; Stats.2011, c. 15 (A.B.109), § 482, eff. April 4, 2011, operative Oct. 1, 2011; Stats.2011, c. 39 (A.B.117), § 53, eff. June 30, 2011, operative Oct. 1, 2011; Stats.2011-2012, 1st Ex.Sess., c. 12 (A.B.17), § 35, eff. Sept. 21, 2011, operative Oct. 1, 2011.)

Notes of Decisions (201)

Current with urgency legislation through Ch. 1 of 2012 Reg.Sess.

Footnotes

- 1 Stats.2010, c. 426 (S.B.76), eff. Sept. 28, 2010.
- 2 Stats.2011, c. 15 (A.B.109), eff. April 4, 2011, operative Oct. 1, 2011.

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