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Your Responsibility When Using the Information Provided Below:

When we wrote this informational material we did our best to give you useful and accurate information. We know it can be hard for prisoners to get information about the law, and we cannot provide specific advice to all prisoners who request it. The laws can change and sometimes can be interpreted in different ways. We cannot always revise this letter every time the law changes. If you use this information, it is your responsibility to make sure it applies to you and that the law has not changed. Most of the materials you need should be available in your institution law library.

CALIFORNIA'S PRISON CROWDING REDUCTION PLANS and CREDIT LAWS (Updated September 17, 2015)

Includes information about second-strike early parole consideration and 2-for-1 credits for all minimum custody prisoners

We send this letter because you asked for information about the plans to reduce California's prison population, or about how the prison credit laws apply to you.

California must reduce its prison population because the United States Supreme Court said that the crowding caused unconstitutional medical and mental health care in the prisons. *Brown v. Plata*, 563 U.S. ___, 131 S. Ct. 1910, 179 L.Ed.2d 969 (2011). The Supreme Court decision, which approved an order issued in 2009 by a three-judge federal court, requires the State to reduce crowding to 137.5 percent of design bed capacity.

The crowding reduction order covers the 34 CDCR prisons as a group, not individually. So long as the statewide average is at or below the percentages set by the federal court (described below), individual prisons, yards, and buildings can be more crowded.

The current deadlines for crowding reduction are:

- 143 percent of design bed capacity by August 31, 2014 (this deadline was met)
- 141.5 percent of design bed capacity by February 28, 2015 (this deadline was met)
- 137.5 percent of design bed capacity by February 28, 2016

As of September 15, 2015, the State had met the Court-ordered crowding reduction level. The population of the prisons is now 135% of capacity. However, the Court is still supervising the State prison population. If the State maintains the population at or below 137.5% of design capacity, it will also meet the final deadline.

If, however, the State prison population rises and the State does not meet the final deadline, a court-appointed Compliance Officer (Retired State Court Justice Elwood Lui) will decide which prisoners to release so that the required crowding reduction is reached.

California has taken a number of steps to reduce prison crowding since 2010.¹ The following are (1) a list of the court-ordered measures that will result in early releases (pages 2-6); and (2) information about the credit law changes for CDCR and jail inmates that were made three or four years ago (pages 7-10).

New Measures That Might Help You Get Out Early

(Some or All of These May Not Apply to You)

■ **Increased Credits for Non-Violent Second Strikers**

The February 2014 court order requires the State to immediately grant credits prospectively for non-violent second strikers, so that those prisoners are eligible to earn 33.3% time credits (they used to earn only 20%). This means non-violent second strikers start earning 33.3% credit as of the date of the order (2/10/14), but do not earn more credits on the time they served before that date.

The CDCR has told the court that all non-violent second strikers who were previously earning 20% credits have since February 10, 2014, started earning 33.3% credits, except those who are required to register as sex offenders (see next paragraph regarding the exclusion of these prisoners). CDCR has told the court that through August 2015, approximately 6,500 prisoners have been released early because of increased second-strike credits. Thousands of other non-violent second strikers currently continue to earn 33.3% time credits.

On September 16, 2014, lawyers for the prisoners filed a motion asking the federal three-judge court to order CDCR to give 33.3% time credits to all non-violent second strike prisoners, including those who are required to register as sex offenders. However, on December 12, 2014, lawyers for the prisoners withdrew this motion because it appeared that it would fail. If the court had denied the motion, that would forever close the door on 290 registrants receiving the additional credits. By withdrawing the motion, we have preserved the ability to raise this issue at a later time if and when there is a better chance of success.

¹ Many of the steps taken do not involve early releases: having some people serve time in county jail instead of state prison, building more prisons, transferring prisoners to private prisons, and county-supervised release instead of CDCR parole.

Other changes, such as increased credits for time in county jail before coming to prison, or changes that increased credits for some serving time in state prison, have been in place for three or four years.

Other recent changes in state law have also reduced the prison population, including Proposition 36 which in November 2012 made changes to the Three Strikes laws (according to the State, approximately 2,100 prisoners have been released because of those changes), and Proposition 47 which since November 2014 allows courts to change certain felonies to misdemeanors, thus shortening some sentences (according to the State, these changes have resulted in the release of approximately 4,400 prisoners). Write to us if you want specific information on Proposition 36 or 47.

■ **Milestone Credits for Non-Violent Second Strikers**

Many prisoners, in addition to whatever other time credits they get, can earn up to six weeks of “Milestone” credits per year for completing approved programs. The February 2014 court order requires CDCR to make Milestone credits available to non-violent second strikers. Non-violent second strikers are now eligible to earn Milestone credits if they complete an approved program. CDCR has told the court that since April 2014, at least 3,000 non-violent second strikers have earned Milestone credits.

■ **Early Parole Consideration for Non-Violent Second Strikers (started January 1, 2015)**

The February 2014 court order requires the State to create and implement a new parole process through which non-violent second-strikers (NVSS) will be eligible for parole consideration by the Board of Parole Hearings (BPH) once they have served 50% of their sentence. The State did not do this quickly, and after the Prison Law Office and other lawyers for the prisoners filed a motion, the federal three-judge court in November 2014 ordered CDCR to start parole consideration for NVSS prisoners by January 1, 2015.

The NVSS parole process is described in a three-page Report which has an attached five page Memorandum, and a 12/30/14 BPH memo. If we thought these documents would help you, we include copies; if not included here and you want them, write us and ask. Here are some of the major points:

- The definition of “non-violent second strikers” is the same as currently used for purposes of earning 33% credit: no current violent offense conviction, and no conviction at all for any offense which requires registration as a sex offender under Penal Code section 290.
- “Served 50% of their sentence” means “actual continuous time served in custody” on the second strike term, not counting any conduct credits earned in county jail or in state prison. For example, if a non-violent second striker got a ten year term from the court, he would be eligible for parole review after serving five actual years.
- Non-violent second-strikers who have served 50% of their term are ineligible for parole consideration if they recently served or are serving a SHU term, have been found guilty of certain types of 115s within certain time periods, if they are or recently have been on “C” status, or if they are within 180 days of their parole date at the time of the classification hearing that decides whether their case should be referred to the parole board.
- There is a two-step process for parole consideration. The first step is the regularly-scheduled annual classification hearing, held by the Unit Classification Committee (UCC). Starting January 1, 2015, ICCs at regularly-scheduled annual hearings will consider whether to refer non-violent second strikers who have actually served 50% of their term, or who will have served 50% of their term within the next 12 months, to the Board of Prison Hearings (BPH) for parole consideration. The prisoner will be referred to BPH unless it is determined that there is a case factor (see above) that makes the prisoner ineligible. The prisoner can appeal (file a 602) if the UCC does not refer him or her to BPH.

- After referral of a prisoner by the UCC, the BPH will decide whether to grant parole based on whether the prisoner would pose an unreasonable risk to public safety. After the classification hearing, the prisoner can send a letter or written statement to BPH, explaining why he or she should be paroled. The letter or statement must be received within 30 days of the classification hearing. BPH will also ask for information from the district attorney of the county from which the prisoner was sentenced, and from any victim registered with the State. The BPH will also consider “all relevant information” including that found in the prisoner’s CDCR central file and “written statements from interested parties.” The BPH decision will be made by a hearing officer, but there will be no hearing.
- The BPH hearing officer must make the parole decision within 50 days of the UCC referral if the prisoner has already served 50% of the sentence. If the prisoner has not yet reached the 50% time served date, the decision must be made 60 days before that date. A written decision will be issued and a copy given to the prisoner by the prisoner’s correctional counselor.
- If BPH grants parole, the prisoner must be released within 50 days of the decision, although the BPH can change its mind about parole during that period. Second-strikers denied parole by BPH will be considered for referral back to BPH for parole consideration at their next annual ICC classification review.

CDCR has told the federal three-judge court that as of August 31, 2015, almost 2,900 NVSS prisoners had been referred to BPH for parole consideration, with 928 approved for release, 875 denied release, and the rest pending a decision. CDCR has told the federal court that it expects a total of approximately 5,000 NVSS prisoners will be referred to BPH by February 2016.

■ **Additional credits for minimum custody prisoners (started January 1, 2015)**

The February 2014 court order requires the State to increase credits prospectively for minimum custody inmates “to the extent such credits do not deplete participation in fire camps.” CDCR had told the federal court that it would not increase time credits for those prisoners because it had determined that giving minimum custody prisoners 2-for-1 credits would deplete participation in fire camps. On September 16, 2014, the Prison Law Office and other lawyers for the prisoners filed a motion asking the federal three-judge court to order CDCR to increase credits for minimum custody prisoners.

After the motion was filed, CDCR on December 12, 2014 agreed to grant two-for-one credits to all prisoners who are designated as Minimum Custody A or Minimum Custody B who are currently eligible to earn day-for-day credits (50%). This new credit measure was implemented on January 1, 2015, and is prospective only (meaning increased credits will be earned only on days served after 1/1/15). On June 5, 2015, CDCR issued a memorandum changing policy so that prisoners previously excluded from Minimum Custody because of a medical or mental health condition can now be made Minimum Custody or get 2-for-1 credits. If we thought information about this new program would help you, we include it here. If we do not include such information and you want it, please write and we will send it to you.

CDCR has told the federal court that so far approximately 2,400 prisoners have been released early because of expanded 2-for-1 credits for those classified as minimum custody.

■ **Medical Parole**

The February 2014 court order requires the State to immediately expand parole consideration for medically incapacitated inmates. The State developed new criteria and procedures for medical parole. Medical staff first determines if a prisoner is eligible, and then those prisoners are referred to the BPH, which will then decide whether the prisoner should be paroled. To be eligible, a prisoner must need assistance from staff while in bed, to eat, transfer (such as from bed to a wheelchair), or with toileting. Generally, such prisoners will be at the Correctional Treatment Center (CTC) level of care and currently in a CTC or other medical bed. For such prisoners referred by medical staff, the BPH will then consider whether the prisoner if paroled would be a risk to public safety. The first medical parole hearings using the new criteria took place in August 2014. A total of 49 hearings have been held, and others are scheduled. Prisoners who think they are eligible for medical parole should ask their doctor or Primary Care Provider to prepare an evaluation. On request, the Prison Law Office will send you an information letter with more details about medical parole.

■ **Elderly Prisoner Parole**

The February 2014 court order requires the State to implement a new parole process whereby inmates who are 60 years of age or older and have served at least 25 years will be referred to the BPH to determine suitability for parole.

The CDCR and the BPH are setting up a process to identify and then consider parole for lifers (whether they have already had an initial parole hearing or not) and determinate-term prisoners who are 60 or older who have served 25 years or more. For any such hearing, the BPH will prepare an assessment of the prisoner's risk to public safety that specifically considers elder status.

For eligible indeterminate term prisoners (lifers), elderly parole will be considered at their next regularly scheduled BPH hearing. However, lifers over age 60 who have served at least 25 years and whose next parole hearing is more than six months away can petition BPH now, asking that the hearing dated be moved up so that elderly parole can be more quickly considered.

Parole consideration hearings for eligible determinate term elder prisoners began in February 2015. Such hearings should be held no later than one year after the prisoner becomes eligible.

CDCR has told the federal court that between February 2014 and August 2015, BPH held 880 hearings for prisoners eligible for elder parole, resulting in 249 grants and 565 denials. Of the remainder, some prisoners stipulated to unsuitability while others waived, postponed, or continued their hearings.

On request, the Prison Law Office will send an information letter with more details on elderly prisoner parole.

■ **Youth offender parole (SB 260)**

Effective January 2014, some prisoners who are serving long terms for crimes they committed before they turned age 18 are eligible for consideration by the BPH for early parole. Unless an exception

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applies, juveniles who received long determinate terms will be considered for parole suitability after serving 15 years, juveniles who received terms of less than 25 to life will be considered after serving 20 years, and juveniles serving 25 years to life or more will be considered after 25 years.

CDCR states that BPH has held approximately 880 youthful offender parole hearings since January 2014, with 224 prisoners being granted parole. Upon request, the Prison Law Office will send an information letter with more details on “SB 260” youth offender parole.

■ **Release of some lifers with future parole dates**

The February 2014 court order requires the State to immediately release certain inmates serving indeterminate sentences who have already been found suitable for parole but have future parole dates. If you are a lifer who has been found suitable for parole and have a future release date, BPH is supposed to consider you for release under this measure after the BPH suitability decision is final (meaning, after the Governor’s review if Governor review is required in your case). If your suitability decision is final and you think you are eligible for early release under this measure but you have not heard from BPH, you should write to the BPH at this address: Board of Parole Hearings, Attention: Legal Division. P.O. Box 4036, Sacramento, CA 95812-4036.

■ **Alternative Custody Program**

The February 2014 court order requires the State to expand the alternative custody program by which prisoners serve part of their sentences in residential homes, drug-treatment programs or transitional-care facilities. Currently, this program is available only to some female prisoners who are pregnant or who were primary caregivers for children prior to incarceration, have no more than 24 months left to serve on their sentences, have not committed certain types of criminal offenses or in-prison misconduct, and do not have felony or immigration detainers. There are currently three community facilities for such prisoners, each with between 75 to 82 beds.

A September 2015 federal court order requires CDCR to make alternative custody programs available to male prisoners. This decision has not yet gone into effect, and it could be stayed and/or appealed, so we do not know if or when CDCR will establish an alternative custody program for men. A fact sheet on the Alternative Custody Program is available from the Prison Law Office or www.cdcr.ca.gov/Adult_Operations/FOPS/docs/ACP-Fact-Sheet-Final.pdf.)

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CDCR prisoners who believe that a crowding reduction measure is not being applied fairly to them should file a regular administrative appeal (green sheet 602) or medical appeal (pink sheet 602-HC), if applicable. We will review any Director or Third Level Response to any such appeal and consider at that time whether we can help. A free informational letter about administrative appeals is available by request from the Prison Law Office or on the Resources page at www.prisonlaw.com.

There is no administrative appeal process for BPH actions, except the BPH Form 1073/1074 for requesting disability accommodations in parole consideration proceedings. If you believe the BPH has treated you unfairly regarding a crowding reduction measure, please write to us. We will consider at that time whether we can help.

**(The information that follows concerns current
state prison and county jail time credits)**

STATE PRISON and COUNTY JAIL TIME CREDITS

For many years, California law has permitted most state prisoners and county jail inmates to shorten their sentences by earning credits for good conduct or participation in work or education programs. The laws and rules for conduct credits have changed many times over the years. The rest of this letter describes changes made in recent years (since 2010) regarding time credits for CDCR prisoners and jail inmates.

There are often rumors and questions about changes in credit laws. Unless a credit law change is listed below, or described above among the changes required by the February 2014 court order, it has not happened. **For example, we sometimes are asked if there are any changes that would increase credits for prisoners who currently must serve 85% of their term. There are no changes for 85% prisoners.**

If you think CDCR is not giving you credits you should get, file an administrative appeal (CDCR Form 602). If the appeal is not granted, re-file to the next level until you get a Third Level response. Once you get a Third Level response, you can file an individual court action (petition for writ of habeas corpus) challenging the CDCR decision.

Changes to CDCR Conduct Credits Made in 2010

In 2010, several changes were made to the laws regarding the time credits earned by state prisoners. These changes apply to any time actually served on or after January 25, 2010. The changes are listed below.

Credits changes for CDCR prisoners, for time served in prison since January 25, 2010:

- All eligible prisoners who are discipline-free get one day of credit for every day served (“half time”), regardless of whether they are working or undergoing reception center processing. (Penal Code § 2933(a)-(b); 15 CCR § 3042.) Previously, prisoners who were not programming could earn a maximum of one day credit for every two days served (“third time”).
- Some prisoners are eligible to earn two days of credit for every day served. This type of credit used to apply only to prisoners who were working at fire camps. It now also applies to prisoner fire-fighters who are assigned to an institution rather than to a camp or have just completed firefighter training. The new credits apply only to people who became eligible after July 1, 2009. (Penal Code § 2933.3(b); 15 CCR § 3044(b)(1).) As explained on page 4 above, the federal three-judge court as of December 2014 is considering whether other minimum custody prisoners should also get two-for-one credit.

[List continues on next page]

- Milestone Credits: eligible prisoners can receive up to 6 weeks of additional credit each year for completing academic, vocational, life skills and substance abuse programs. The CDCR calls these “milestone” credits. Milestone credits cannot be earned by anyone who is (1) required to register as a sex offender under Penal Code section 290 et seq., (2) serving time on a parole violation without a new criminal term, (3) serving a term for a violent felony, or (4) serving a term under the Three Strikes Law. (Penal Code § 2933.05.) The CDCR decides which programs qualify and what criteria that must be met. Prisoners will be notified of a credit award via a CDCR Form 128G. The program began January 25, 2010, and no credit is granted for programming completed prior to that date. If a prisoner earns more than 6 weeks of milestone credits in a year, the excess credits will go into a credit “bank account” and can be applied at the end of the next 12-month period. The next 12 month period begins on the date the first milestone is completed. Milestone credits that are not applied by the time a person paroles will not reduce the parole term or apply to any future parole revocation or criminal term. (15 CCR § 3043(c).)

The new laws in 2010, described above, did not change the statutes that limit or prohibit CDCR credits for prisoners with certain types of convictions or sentences:

- Prisoners sentenced under the Two Strikes Law for a violent offense can earn only 20 percent credits. (Penal Code § 667(c)(5) and § 1170.12(a)(5).) As explained in the first section of this handout, since February 10, 2014 non-violent second strike offenders earn 33.3% credit.
- Prisoners convicted of violent felonies can earn only 15 percent credits. (Penal Code § 2933.1.) There have been no credit law changes for these prisoners, who must serve 85% of their sentence.
- Some prisoners cannot earn any conduct credits. These include prisoners convicted of murders committed on or after June 3, 1998 (Penal Code § 2933.1) and prisoners convicted of specific very serious offenses who have served two or more prior prison terms for those types of offenses (Penal Code § 2933.5). It also includes some other prisoners serving terms of life with the possibility of parole (eligibility for conduct credits on a life term depends on the whether the statute for the crime authorizes credit-earning).
- People serving civil commitments as narcotics addicts do not earn any conduct credit. (*People v. Jones* (1995) 11 Cal.4th 118.)
- Under the 2010 law, the CDCR still prohibits credit-earning for prisoners who refuse to program or who commit serious disciplinary violations (Work Groups C and D-2). (See Pen. Code § 2933.6; 15 CCR §§ 3043.4 and 3044.) Note that the amendments that went into effect January 25, 2010 decreased the credits that some prisoners can earn. D-2 status used to apply just to prisoners who committed serious misconduct and were placed in a SHU or ASU. D-2 status now also applies to prisoners who are placed in segregation as validated gang members. Also, D-2 status applies to PSU or BMU placements as well as to SHU or ASU placements. (Penal Code § 2933.6(a); 15 CCR § 3043.4 and § 3044(b)(7).)

Changes Made in 2011 for Conduct Credits for Parole Revocation Terms

Assembly Bills 109/117, which took effect on October 1, 2011, made these changes for parole revocation term credits:

- For all parole violations that result in holds on or after October 1, 2011, parolees earn day-for-day good conduct credit (“half-time”) on their parole revocation terms, regardless of the nature of their commitment offense or parole violation. (Penal Code §§ 3057(e) and 4019(a)(5).)
- When people are placed on Post-Release Community Supervision (PRCS), they earn half-time conduct credits for periods of formal PRCS revocation. (Penal Code § 4019(a)(5).)
- Neither parolees nor people on PRCS receive conduct credits for periods of “flash incarceration” of up to 10 days. (Penal Code §§ 4019(i) and 3450(b)(8)(A).)

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Changes Made in 2010 and 2011 for Conduct Credits for Time Served In County Jail

In 2010 and 2011, the State changed the laws regarding how much credit can be earned on time served in county jails, including Penal Code section 4019. Credit for time in county jail is not awarded by CDCR, but by the Sheriff who runs the jail. For those convicted of a crime and sentenced to state prison, credit against the prison sentence for time served and credits earned in jail is given by the superior court at the time the prisoner is sentenced. CDCR cannot change your county jail credits. If you think you did not get the right credits for county jail time, you should file a direct appeal of your sentence (if you can), or file a petition for habeas corpus in the superior court that sentenced you.

The amount of credit a jail inmate earns depends on three factors: (1) the dates when the inmate was in jail; (2) the type of crimes or prior offenses; and (3) whether the inmate lost any credits by failing to comply with prison rules and programming requirements. These are the basic rules:

(1) Credit for County Jail Time prior to January 25, 2010

For time served prior to January 25, 2010, most jail inmates were eligible to earn up to two days of good conduct/work credit for every six days actually served (“third time”). Some exceptions applied:

- Inmates with current convictions for violent felonies earn conduct credits only in the amount of 15 percent of the actual days served. (Penal Code § 2933.1.)
- Some inmates cannot earn any conduct credit. This includes anyone convicted of murder (Penal Code § 2933.2(c)) and anyone convicted of certain offenses, who has served two or more prison terms for prior convictions for such offenses. (Penal Code § 2933.5.)

(2) Credit for County Jail Time from January 25, 2010 and before September 28, 2010

Starting on January 25, 2010, most jail inmates became eligible to earn two days of good conduct/work credit for every four days actually served. With credit for both actual time and good conduct, four days is deemed served for every two days actually spent in jail.² (Penal Code § 4019(b)-(c) and (f).) Some exceptions apply:

- The same exceptions that applied for time prior to January 25, 2010 (see # 1 in this section).
 - Some inmates could still earn only two days of conduct credit for each six days actually served (“third time”). This applied to anyone (1) required to register as sex offender under Penal Code § 290 et seq., (2) being sentenced for or has a prior conviction for a serious felony as defined in Penal Code § 1192.7(c), or (3) with prior conviction for a violent felony as defined in Penal Code § 667.5(c).
- (3) Credit for County Jail Time between September 28, 2010 and before October 1, 2011 (Senate Bill 78)

As of September 28, 2010, there were a few changes to Penal Code § 4019:

- Credit-earning was reduced for people sentenced to county jail time or probation. People in those groups were not allowed to earn half-time conduct credits, and received a maximum of “third time” (two days conduct credit for each six days served) for time spent in the county jail, both before and after sentencing. This change applied only to people confined for crimes committed on or after September 28, 2010.
 - For people sentenced to prison, the pre-sentence conduct credits rules were moved to Penal Code § 2933(e)(1). The CDCR was given the responsibility for calculating such credits. Also, the “half-time” formula was changed slightly – a defendant sentenced to prison received one day of conduct credit for each day served in jail starting from the day of arrest and until arriving in state prison.
- (4) Credit for County Jail Time on and after October 1, 2011 (Assembly Bills 109/117)

New amendments were enacted that apply to anyone confined in a county jail for a crime committed on or after October 1, 2011.

- The amendments eliminated the changes that had gone into effect on September 28, 2010 (see Section I-3, above). For county jail time, most prisoners now get two days credit for every two days they serve. See Penal Code section 4019(f). This applies to time served both before and after sentencing and regardless of whether the defendant receives probation, a jail sentence or a prison sentence. The sentencing court at the time of sentencing gives the inmate/prisoner credit for all pre-sentence time in custody, including any credits on actual days served.

². We recognize that these two descriptions of credit-earning status contained in Penal Code 4019 appear to contradict each other. The practice, however, is clearly to follow the second more generous statement of legislative intent, that jail inmates are deemed to have served four days for every two days spent in jail. See, e.g., *People v. Denham* (2013) 218 Cal.App.4th 800, 815; *People v. Chilelli* (2014) 225 Cal.App.4th 581, 592; *People v. Rajanayam* (2012) 211 Cal.App.4th 42, 48-49.

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- The amendments got rid of some of the restrictions on time credit eligibility for county inmates either awaiting sentencing or serving a county jail term. There are no longer restrictions on pre-sentence credit-earning for people who have prior serious or violent felony convictions, current serious felony convictions, or who are required to register as sex offenders.

Otherwise, the rules for pre-sentence credits that were in effect on January 25, 2010 still apply (see number 2, above).

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