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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 because we know that prisoners and inmates often have difficulty obtaining legal information and we cannot provide specific advice to all those who request it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

**INFORMATION ON CONDUCT CREDITS AND PRIVILEGES FOR JAIL INMATES
SERVING FELONY SENTENCES (AB 109 CASES)
May 2016**

We have received your inquiry about whether county jail inmates serving felony sentences are entitled to the same conduct credits and privileges as CDCR prisoners. Unfortunately, we do not have the resources to provide individual responses or assistance to everyone who has contacted us about this issue. We hope the information in this letter will help answer your questions.

In 2011, as part of the “Realignment” of California’s criminal justice system, the state legislature changed the law so that some people with felony convictions now serve their sentences in county jail rather than in state prison. This change was enacted by Assembly Bill 109, which created Penal Code § 1170(h).

People who are serving felony county jail terms under § 1170(h) are in the custody of the local county officials, just like pre-sentence detainees and jail inmates who are serving misdemeanor sentences. County jail officials must follow Title 15 of the California Code of Regulations, Division 1, §§ 1000 *et seq.*, regarding Local Detention Facilities. County jail inmates serving § 1170(h) felony sentences are not under CDCR authority and cannot earn credits or receive privileges under the regulations that apply to CDCR prisoners. Division 3, §§ 3000 *et seq.*, in Title 15 of the California Code of Regulations does not apply to county jail inmates.

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Penal Code § 4019 governs good conduct credits for jail inmates serving § 1170(h) felony sentences. (PC § 4019(a)(6).) Under § 4019, jail inmates serving § 1170(h) felony sentences can earn “half time” good conduct credits of two days for every two days actually served. Credits can be denied or taken away for disciplinary violations or refusals to participate in assigned programs. (PC § 4019(b)-(f); see *People v. Chilelli* (2014) 225 Cal.App.4th 581, 591 [170 Cal.Rptr.3d 395].) If you think you are not getting the correct amount of good conduct credits, you should complete the jail grievance process, asking to be granted additional good conduct credits. If your grievance is denied, you can file a state petition for writ of habeas corpus in the local superior court.

Some county jail inmates serving § 1170(h) felony sentences have complained that they are being treated unfairly because they are not receiving the same credits¹ or privileges as some lower-level CDCR prisoners. The laws on good conduct credit earning for CDCR prisoners are found in Penal Code §§ 2933-2933.6 and the regulations on CDCR prisoner credits and privileges are found in Title 15 of the California Code of Regulations, Division 3. Unfortunately, there is *no* legal authority to believe that these regulations apply to county jail inmates serving § 1170(h) felony sentences.

It is an open question whether county jail inmates serving § 1170(h) felony sentences might be able to convince the courts that getting fewer credits or privileges than low level CDCR prisoners violates the U.S. Constitution’s Fourteenth Amendment right to equal protection. To win an equal protection claim, a jail inmate would have to show that, for the purposes of the conduct credit or privilege laws, jail inmates serving § 1170(h) felony sentences are “similarly situated” to the CDCR prisoners who are getting more than half-time credits. A jail inmate would also have to show that the state does not have a good enough reason for treating the two groups differently; in most cases a jail inmate would have to show that the policies do not have any possible rational relationship to a legitimate state purpose. (See e.g., *People v. Brown* (2012) 54 Cal.4th 314, 318 [142 Cal.Rptr.3d 824].)

If you are a jail inmate and you want to raise an equal protection challenge or other legal challenge to the jail conduct credit or privilege laws, you should exhaust administrative remedies by completing the jail grievance process, asking to be granted additional conduct credits or privileges. If your grievance is denied, you can file a state petition for writ of habeas corpus, starting in the local county superior court.

On request, the Prison Law Office can provide free manuals on county jail grievances and state court petitions for writ of habeas corpus. These manuals are also available on the Resources page at www.prisonlaw.com.

¹ In addition to earning half-time good conduct credits (PC § 2933), some CDCR prisoners can earn “milestone” programming credits of up to six weeks for every year served (PC § 2933.05). Also, CDCR prisoners who are firefighters or conservation camp workers (PC § 2933.3) or who are in minimum security (per a court order in the *Plata v. Brown* overcrowding case) can get two days of conduct credit for every day served (“2-for-1 credits”), as well as milestone credits.