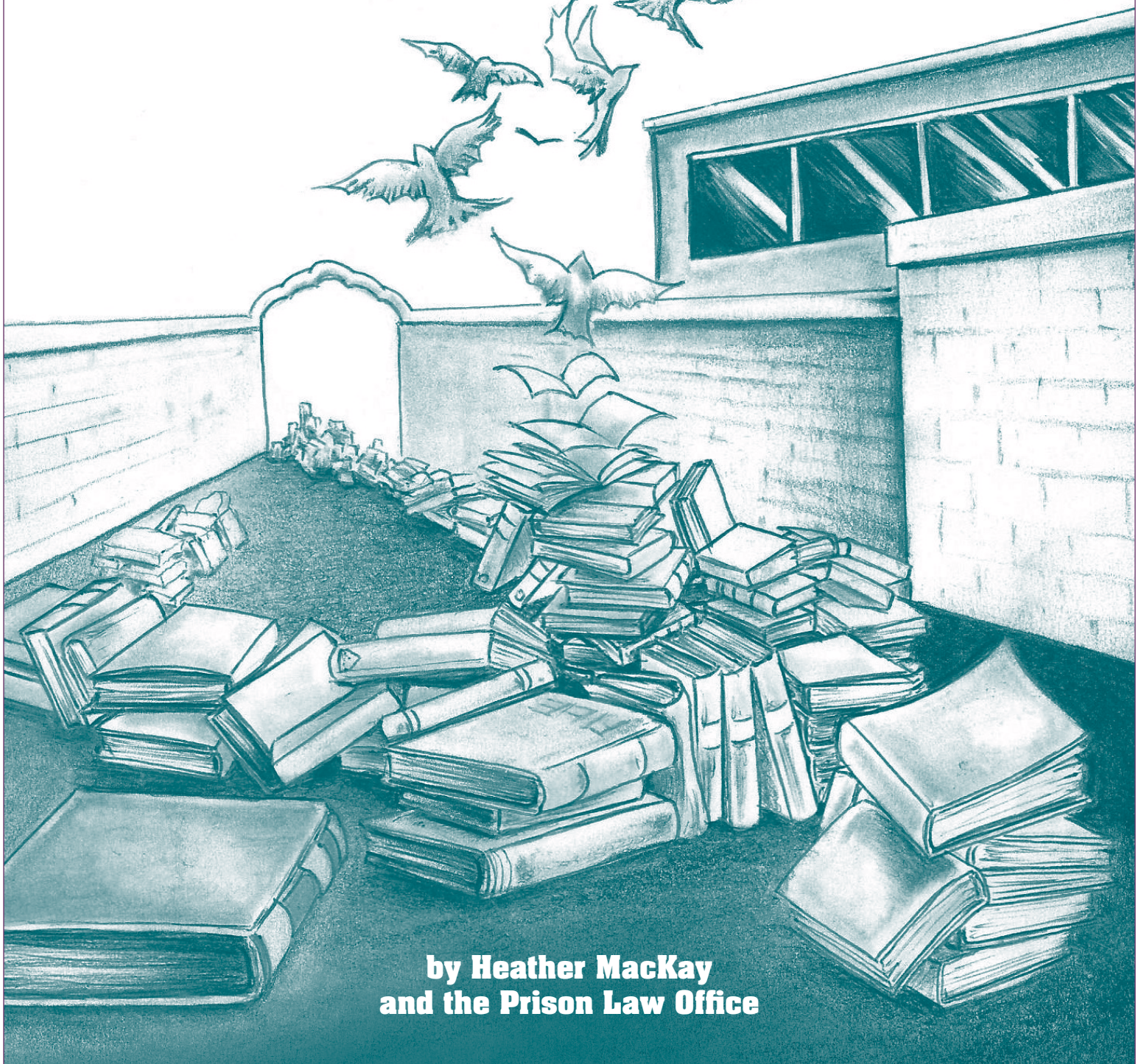


# The California Prison and Parole Law Handbook



by Heather MacKay  
and the Prison Law Office

# THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

BY HEATHER MACKAY  
&  
THE PRISON LAW OFFICE

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## **YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK**

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, 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 a prison law library or in a public county law library.

# CHAPTER 8

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## 8.1 Introduction

This chapter explains how courts construct determinate (set length) prison sentences and how people incarcerated in California prisons can reduce the amount of time actually served by earning credits for good behavior and programming. It also discusses some ways for people to get discretionary resentencing by the courts; the most common of these are compassionate releases for people who are terminally ill or medially incapacitated and reforms that retroactively reduce the penalties for some theft and drug crimes.

The laws governing pre-sentence and in-prison behavior credits have changed numerous times over the years. Those changes usually apply only to time served after the date each change in the law took effect. Thus, different credit-earning rules may apply to various portions of a person’s sentence. Adding to the confusion, the statutes have not yet been updated to reflect recent changes to the credit laws put in place by court orders or under new CDCR regulations enacted in 2017 pursuant to Proposition 57.

For information on earlier parole consideration by the Board of Parole Hearings (BPH) for some people with determinate sentences for non-violent crimes under Proposition 57, for people who were young (under age 26) at the time of their crime, for elderly people (age 60 or older), and for medical reasons, see §§ 9.40-9.43. The process to request a commutation or pardon by the Governor is discussed in § 9.49.

Sentences, prison credit-earning, and release dates for people serving indeterminate sentences of life with the possibility of parole and life without the possibility of parole (LWOP) are discussed in Chapter 9. Parole revocation terms and credits are discussed in Chapter 11.

## 8.2 CDCR Legal Status Summary and the Earliest Possible Release Date (EPRD)

Three factors determine the date on which a person will be released from CDCR custody. The first is the length of the prison term imposed by the sentencing court. (See §§ 8.4-8.10.) The second is the credits earned for actual time served custody and good conduct in custody prior to arriving in the CDCR. (See §§ 8.18-8.26.) The third is the good conduct and other programming credits earned while in CDCR custody. (See §§ 8.27-8.40.)

The CDCR summarizes sentencing and credit information on a computer printout called a Legal Status Summary (LSS), sometimes accompanied by a credits worksheet. A sample LSS and explanation is included as Appendix 4-A. The most important date on the LSS is the Earliest Possible Release Date (EPRD). The EPRD is a tentative prediction or “best guess” as to the actual release date, assuming that the term length and credit-earning status will not change.<sup>1</sup> The CDCR’s basic method for calculating the EPRD is as follows: (1) add the total prison term to the date on which the CDCR “received” the person; (2) deduct all pre-sentence credits awarded by the sentencing court (the time the person spent in county jail before they were sentenced), credits earned between sentencing and arrival in the CDCR, and credits earned since arrival in the CDCR; (3) estimate and deduct the Good Conduct Credits and other programming credits the person is likely to earn in the future. The resulting date is the EPRD.

If a person’s sentence changes or they receive an additional prison term, then the EPRD will change. Likewise, the EPRD might change if the Work Group status changes (see §§ 8.30-8.33), if the person earns additional credits for completing programs or education or for extraordinary conduct (see §§ 8.34-8.37), or if credits are lost due to rule violations (see § 8.38) or restored for subsequent good behavior (see §§ 8.39-8.40). Case records staff should update the EPRD periodically. Case records staff also will review a person’s release date 60 days and 10 days prior to release,<sup>2</sup> and may adjust the release date if any errors are found. When a release date changes, the person should be notified of the change and be provided a copy of the LSS, and they can require the CDCR staff to explain the new calculation (see § 8.42). However, a person has no legal right to compel the CDCR to honor an incorrect release date that was based on a calculation error.<sup>3</sup> Indeed, in some cases, people who have been released early due to credit errors have been returned to prison to serve the rest of their sentences.<sup>4</sup>

The following page contains a blank EPRD calculation worksheet showing the basic steps in calculating an EPRD. Appendix 4-A includes a calculation worksheet based on the sample LSS.

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<sup>1</sup> The dates on which a person may be considered for discretionary earlier parole, if any, are listed separately on the LSS. Information about the forms of discretionary earlier parole consideration for some people is in §§ 9.40-9.43.

<sup>2</sup> DOM § 73010.4.1.

<sup>3</sup> *In re Messerschmidt* (1980) 104 Cal.App.3d 514 [163 Cal.Rptr. 580].

<sup>4</sup> *People v. Clancey* (2013) 56 Cal.4th 562 [155 Cal.Rptr.3d 485]; *In re Borlik* (2011) 194 Cal.App.4th 30 [124 Cal.Rptr.3d 410]; *In re Messerschmidt* (1980) 104 Cal.App.3d 514 [163 Cal.Rptr. 580].

**EARLIEST POSSIBLE RELEASE DATE (EPRD) WORKSHEET<sup>5</sup>**

1. Term start date (arrival in Reception Center)		_____
2. Add total term	+	_____
3. Resulting date	=	_____
4. Subtract pre-Sentence credit (actual and conduct)	-	_____
5. Resulting date	=	_____
6. Subtract post-Sentence/pre-CDCR actual days	-	_____
7. Equals Maximum Release Date	=	_____
8. Subtract “Vested” Credits (conduct credits earned after sentencing but before arrival in the CDCR, same rate as for pre-sentence conduct credits)	--	_____
9. Equals Maximum Adjusted Release Date	=	_____
10. Subtract net prison behavior credits (Good Conduct, <sup>6</sup> Milestone, Rehabilitative Achievement, & Educational Merit Credit earned minus credits lost for rule violations, plus credits restored)	--	_____
11. Equals Current Release Date	=	_____
12. Subtract future Good Conduct Credits expected: <sup>7</sup>	-	_____
13. Earliest Possible Release Date (EPRD)	=	_____

<sup>5</sup> When adding the total term to the term start date (steps 1 and 2), the time is added without regard to the differing number of days in the months. However, for every step after that, take into account the differing number of days in the months. Also, credit calculation results are always rounded down to the nearest whole number.

<sup>6</sup> For Step 10, the CDCR calculates Good Conduct Credit already earned by taking the actual number of days served in CDCR and doing one of the following calculations:

- two days of credit for every one day served (“66.6%”) – multiply by 2
- one day of credit for every day served (“50%”) – divide by 1
- one day of credit for every two days served (“33.3%”) – divide by 2
- one day of credit for every four days served (“20%”) -- divide by 4, 15% credit – divide by 5.66
- zero credit earning -- credits are 0

(Note that the CDCR’s percentage nomenclature for the various credit-earning categories is internally inconsistent.)

<sup>7</sup> For step 12, the CDCR calculates Good Conduct Credit that could be earned in the future by counting the number of days between the present date and the Current Release Date and then doing one of the following calculations:

- two days of credit for every one day served (66.6%) – divide by 3 then multiply by 2
- one day of credit for every day served (50%) – divide by 2
- one day of credit for every two days served (33.3%) – divide by 3
- one day of credit for every four days served (20%) -- divide by 5
- 15% credit – divide by 6.66
- zero credit earning – credits are 0

## THE SENTENCE IMPOSED BY THE COURT

### 8.3 Pre-Sentence Diagnosis and Evaluation

If a court concludes that further evaluation is necessary before sentencing, it may order that the person be placed temporarily in a CDCR facility for no more than 90 days.<sup>8</sup> This procedure is commonly used when the court is considering granting probation but has concerns about the person's mental health or risk of re-offending.

The CDCR will house the person in a reception center during the evaluation period. The CDCR generally attempts to complete the evaluation and submit a report to the court within 23 days.<sup>9</sup> During this period, the CDCR will observe the person and develop a recommendation as to the person's potential for success on probation and level of threat to the community.<sup>10</sup> Participating in the evaluation and showing a positive attitude and good behavior during the evaluation may significantly improve the chances that the court will grant probation. Also, although there is no formal opportunity for attorney input into the CDCR's evaluation, an attorney may communicate with the prison case records staff to make sure that they have all the background information that is favorable, including probation officer or social worker recommendations, medical or psychological evaluations, or other supporting documents.

If the CDCR staff finds that the person is suffering from a mental health condition related to their criminal conduct, the prison staff may administer treatment with the person's consent. If the treatment will require a longer period than the 90 day commitment, the CDCR can petition the court to extend the diagnostic period. The petition must be accompanied by the person's written consent to extension of the commitment.<sup>11</sup> (See Chapter 7 for more information about mental health treatment in the CDCR.)

### 8.4 Pronouncement of the Sentence and the Abstract of Judgment

Sentences in California criminal cases usually are imposed by the judge that conducted the trial or accepted the guilty or no contest plea. A court must orally pronounce any felony sentence at a hearing in the presence of the person being sentenced.<sup>12</sup> The court reporter must record everything that is said at the sentencing hearing (though a transcript probably won't be printed unless someone appeals the judgment).<sup>13</sup> Also, the court clerk must record the sentence on a document called an "Abstract of Judgment."<sup>14</sup> The Abstract of Judgment shows the dates of the offenses and conviction, the statutes under which the person has been convicted and sentenced, and the lengths of the sentences for all of the charges and how they relate to each other. The Abstract of Judgment also lists

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<sup>8</sup> Penal Code § 1203.03(a). Such a commitment is not a final sentencing order and cannot be appealed. *People v. Becket* (1968) 262 Cal.App.2d 145 [68 Cal.Rptr. 464]; see also *People v. Taylor* (1980) 112 Cal.App.3d 348 [169 Cal.Rptr. 290].

<sup>9</sup> DOM § 61040.6.

<sup>10</sup> Penal Code § 1203.03(b); see also DOM § 61040 et seq.

<sup>11</sup> Penal Code § 1203.03(h).

<sup>12</sup> Penal Code § 1193(a).

<sup>13</sup> California Rules of Court, rule 4.431.

<sup>14</sup> Penal Code § 1213.



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any pre-sentence credits that were granted, restitution and fines or fees that were imposed, and other sentencing orders such as registration requirements.

A copy of the Abstract of Judgment will be sent to the CDCR and placed in the person's CDCR Central File. The Central File may also contain a copy of the sentencing transcript.<sup>15</sup>

A person who is concerned about whether their sentence is lawful should first determine whether the sentence recorded on the Abstract of Judgment matches the oral pronouncements of the court and with California's sentencing laws. This is also the first step in determining whether a sentencing order is being properly interpreted by the CDCR. Sentencing law consists of many statutes — most of which are in the Penal Code, Health and Safety Code, or Vehicle Code — and some court rules. There are also court decisions interpreting these statutes and rules. To further complicate matters, the sentencing laws have been amended many times over the years; the laws that were in effect on the date the offense was committed usually control what sentence can be imposed.<sup>16</sup> The following sections provide only a general overview of these sentencing laws. Further information may be obtained by reading the relevant statutes, rules, and cases, or from other law books.<sup>17</sup> (Chapter 19 contains further information on how to do legal research.)

A sentence that complies with California sentencing laws is almost certainly lawful. However, the sentencing laws are very complicated and judges sometimes mistakenly impose sentences that are not authorized. Judges can also abuse their discretion in selecting among various sentencing options if their decisions are based on factual or legal misunderstandings or if the facts do not support the court's conclusion.<sup>18</sup>

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<sup>15</sup> Penal Code § 1213; DOM § 72030.4.2.

<sup>16</sup> The constitutional prohibition on ex post facto laws forbids increasing a person's punishment based on laws that went into effect after the offense was committed. *Miller v. Florida* (1987) 482 U.S. 423 [107 S.Ct. 2446; 96 L.Ed.2d 351]. The ex post facto doctrine also applies to sentence credit laws, and a state may not retroactively cancel credit provisions that were in effect at the time of sentencing. *Lynce v. Mathis* (1997) 519 U.S. 433 [117 S.Ct. 891; 137 L.Ed.2d 63]; see also *Flemming v. Oregon Board of Parole* (9th Cir. 1993) 998 F.2d 721. However, some sentencing requirements are not considered "punishment" under the ex post facto doctrine; thus, a person may be required to register as someone with sex-related offenses, provide blood for an AIDS test, or provide a DNA sample, even if the statutes authorizing such requirements did not take effect until after the offense was committed. *Smith v. Doe* (2003) 538 U.S. 84 [123 S.Ct. 1140; 155 L.Ed.2d 164]; *Hatton v. Bonner* (9th Cir. 2003) 356 F.3d 955; *People v. Castellanos* (1999) 21 Cal.4th 785 [88 Cal.Rptr.346]; *People v. McVickers* (1992) 4 Cal.4th 81 [13 Cal.Rptr.2d 850]. Sometimes the state enacts new criminal sentencing or credit laws that are more favorable to people who are convicted. The state usually has the power to decide whether or not the new laws apply retroactively to those who committed their offenses prior to the change in the law. Courts apply rules of statutory interpretation to decide whether the law applies retroactively. Courts may also consider whether prospective-only application violates the constitutional guarantee of equal protection. Penal Code § 3; see, e.g., *People v. Brown* (2012) 54 Cal.4th 314 [142 Cal.Rptr.3d 824]; *People v. Floyd* (2003) 31 Cal.4th 179 [1 Cal.Rptr.3d 885]; *In re Estrada* (1965) 63 Cal.2d 740 [48 Cal.Rptr. 172].

<sup>17</sup> See, e.g., Witkin's *California Criminal Law* (3d ed. 2000 and annual supplements), § 1444 et seq., or the Continuing Education of the Bar, *California Criminal Law: Procedure and Practice* (updated annually).

<sup>18</sup> *People v. Carmony* (2004) 33 Cal.4th 367, 378 [14 Cal.Rptr.3d 880]; *People v. Williams* (1998) 17 Cal.4th 148, 163-164 [69 Cal.Rptr.2d 917]; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530, n. 13 [53 Cal.Rptr.2d 789]; *People v. Cluff* (2001) 87 Cal.App.4th 991, 998, 1002-1003 [105 Cal.Rptr.2d 80]; *In re Barfoot* (1998) 61 Cal.App.4th 923, 931 [71 Cal.Rptr.2d 870].

In addition, some sentences may be so harsh as to constitute cruel and unusual punishment in violation of the federal and state constitutions; however, the standard for showing that a sentence is cruel and unusual is extremely difficult to meet.<sup>19</sup>

## 8.5 Overview of Felony Sentences

In California, the length of sentences is determined by the Determinate Sentencing Law (DSL), which since 1977 has required courts to set fixed terms for most offenses.<sup>20</sup>

The DSL distinguishes between misdemeanors and felonies. Misdemeanors are considered to be seen as less serious crimes for which the maximum punishment is up to one year (364 days) in county jail.<sup>21</sup> Felonies are considered to be more serious crimes and usually subject to punishment ranging from one year in jail or prison to death.<sup>22</sup> Some crimes can be sentenced as either misdemeanors or felonies; these types of crimes are commonly called “wobblers.”<sup>23</sup> Courts also have the option of granting probation in misdemeanor cases and in many felony cases.<sup>24</sup>

Prior to October 1, 2011, the sentence for any felony was a state prison term of more than one year (except for a few cases punishable by death). Effective October 1, 2011, the law was changed so that most people convicted of low-level felony offenses now serve their terms in county jail, usually with part of the sentence suspended during a period of mandatory supervision “split” sentences with a mix of county jail and probation time.<sup>25</sup>

The felonies punishable by county jail terms are identified in the specific statutes by language stating that the crime is “punishable by imprisonment pursuant to subdivision (h) of Section 1170.”

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<sup>19</sup> The Eighth Amendment to the United States Constitution and Article I, § 17 of the California Constitution forbid any sentence that is so disproportionate to the crime that it shocks the conscience and offends fundamental notions of human dignity. Determining whether a sentence is cruel and unusual requires consideration of: (1) the gravity of the offense based on the “totality of the circumstances,” including the characteristics of the person; (2) comparison of sentences imposed for other crimes in the same jurisdiction; and (3) comparison of the sentence imposed with those provided for the same crime in other jurisdictions. *Harmelin v. Michigan* (1991) 501 U.S. 957 [111 S.Ct. 2680; 115 L.Ed.2d 836]; *Solem v. Helm* (1983) 463 U.S. 277 [103 S.Ct. 3001; 77 L.Ed.2d 637]; *People v. Dillon* (1983) 34 Cal.3d 441, 477-481 [194 Cal.Rptr.390]; *In re Lynch* (1972) 8 Cal.3d 410, 425-427 [105 Cal.Rptr. 217].

<sup>20</sup> Penal Code § 1170(a)(1).

<sup>21</sup> Penal Code § 17(a); Penal Code §§ 18.5-19.2.

<sup>22</sup> Penal Code § 17(a); Penal Code § 18; Penal Code § 1170(h)

<sup>23</sup> Penal Code § 17(b); see, e.g., *People v. Lynall* (2015) 233 Cal.App.4th 1102, 1110 [183 Cal.Rptr.3d 129].

<sup>24</sup> Penal Code § 1203 et seq.; California Rules of Court, rule 4.411; California Rules of Court, rules 4.413-4.414.

<sup>25</sup> Penal Code § 17; Penal Code § 1170(h). The changes do not apply to people sentenced before October 1, 2011. See also *People v. Scott* (2014) 58 Cal.4th 1415, 1426 [171 Cal.Rptr.3d 638] (changes do not apply where sentence imposed and suspended due to a grant of probation before October 1, 2011 but executed after that date).

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However, there are some additional prior or current case factors that may make a person ineligible for a county jail sentence; in such a case, the sentence must be to state prison.<sup>26</sup>

A person who receives both a felony term which requires prison placement and a felony term that would normally be punished by county jail placement must serve both sentences in prison, even if some of the time served is for only the conviction that would otherwise be served in county jail.<sup>27</sup>

The following sections discuss how felony sentences are structured (§§ 8.6-8.10). If a sentence is imposed for more than one felony, then one of the charges usually the one carrying the longest sentence, will be deemed the “principal term.” The sentences imposed for the other crimes are “subordinate” terms and they may be run consecutively (one after the other) or concurrently (at the same time). Sentences may be “enhanced” based on specific facts related to the crime or based on prior prison terms or convictions. Some terms or enhancements may be stayed or stricken, meaning they don’t count toward the sentence at all. The total of all of these parts is called the “aggregate term.”<sup>28</sup>

### 8.6 Selecting the Low, Middle, or High Term

For most felonies, a court can select one of three possible sentences — the low, middle or high term. The range of sentencing for each crime is normally included with or shortly after the Penal Code definition of the crime. For example, for first degree burglary, the sentence range is two, four or six years.<sup>29</sup> If a felony statute does not state a specific range of terms, the possible terms are 16 months, two years, or three years.<sup>30</sup> In deciding what sentence to impose, a judge should consider various aggravating and mitigating factors. Aggravating factors are facts about the person or the crime that tend to support a longer sentence. Mitigating factors are facts about the person or the crime that tend to support a shorter sentence.<sup>31</sup>

Even under the DSL, some serious or repeat offenses still are punishable by “indeterminate” terms such as 15 or 25 years to life. The DSL also provides for sentences of death or life without the

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<sup>26</sup> A person cannot serve a jail term for a felony if they have a prior or current conviction for a “serious felony” described in Penal Code § 1192.7(c) or a “violent felony” described in Penal Code § 667.5(c), or if the person is required to register as someone with sex-related offenses or the sentence includes an aggravated white-collar crime enhancement. Penal Code § 1170(h)(3). Prior juvenile court cases for serious or violent felonies are deemed to be convictions that prohibit a person from being sentenced to county jail, but courts have discretion to strike prior juvenile offenses when the interests of justice would be furthered by sending the person to jail rather than prison. *People v. Delgado* (2013) 214 Cal.App.4th 914, 918-919 [154 Cal.Rptr.3d 337].

<sup>27</sup> *People v. Torres* (2013) 213 Cal.App.4th 1151 [152 Cal.Rptr.3d 836].

<sup>28</sup> Penal Code § 1170.1(a).

<sup>29</sup> Penal Code § 461(a).

<sup>30</sup> Penal Code § 18.

<sup>31</sup> Penal Code § 1170(b); California Rules of Court, rule 4.409; California Rules of Court, rules 4.420-4.423. Prior to March 30, 2007, the presumptive term under Penal Code § 1170(b) was the middle term and judges had to make findings of fact to justify imposing the upper or low term. The United States Supreme Court found this procedure violated the Sixth Amendment to the federal Constitution. *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856; 166 L.Ed.2d 856]. The California legislature then amended § 1170(b) to give judges full discretion in selecting the term, and the California Supreme Court held that this new law may be applied to offenses committed prior to the amendment. *People v. Sandoval* (2007) 41 Cal.4th 825 [62 Cal.Rptr.3d 588].

possibility of parole (LWOP) for the most serious crimes. (See Chapter 9 for more information on LWOP terms, indeterminate terms and parole suitability determinations.)

## 8.7 Ordering Consecutive or Concurrent Subordinate Terms

If a person is convicted of more than one felony, the sentencing court will choose one to be the principal term. The court then must decide how to run the subordinate terms for the other counts. The subordinate terms can run consecutive to the current term or concurrent to the current term.<sup>32</sup> “Consecutive” means that the subordinate term will be added on to the end of the principal term, lengthening the total sentence. “Concurrent” means that the subordinate term (which may be either the low, mid or high term) runs at the same time as the principal term; this usually means that the defendant won’t have to serve any additional time for the subordinate term. Generally, the choice between concurrent or consecutive terms is up to the court. The court should consider various factors when making this choice.<sup>33</sup> However, there are some circumstances in which a court is required to impose a consecutive sentence. For example, serious sex-related offenses and some crimes committed in prison must be punished by consecutive terms.<sup>34</sup>

Similarly, when a person is sentenced under the Two Strikes law, subordinate sentences must run consecutively if they are for serious or violent felonies or for offenses not committed on the same occasion or based on the same set of facts.<sup>35</sup>

If the court decides that a subordinate term will run consecutive to the principal term, the court must then calculate the length of the subordinate term. Unless an exception applies, the subordinate term will be one-third the length of the mid-term sentence for the crime.<sup>36</sup> In some cases, the law allows or requires that the subordinate term be a full-length sentence. For example, people convicted of certain sex-related crimes can be sentenced to full-length consecutive terms.<sup>37</sup>

There is a special rule when a person commits a crime in prison and receives a sentence consecutive to the original commitment offense. In such a case, the sentence for the new crime will be a full new principal term. However, if the person commits additional in-prison offenses, the sentence for the subordinate offenses may be run concurrently or consecutively, and any consecutive terms will be calculated using the normal formula of one-third of the mid-term. This rule applies even if the subordinate terms are committed at separate times and charged in separate cases. In other words, all the in-prison offenses are calculated as an aggregate term separate from the original commitment term.<sup>38</sup>

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<sup>32</sup> Penal Code § 669.

<sup>33</sup> California Rules of Court, rule 4.425. This has been held not to violate the Sixth Amendment of the U.S. Constitution. *People v. Black* (2007) 41 Cal.4th 799 [62 Cal.Rptr.3d 569].

<sup>34</sup> Penal Code § 667.6(d); Penal Code §§ 4501-4503.

<sup>35</sup> Penal Code § 667(c)(6)-(7).

<sup>36</sup> Penal Code § 1170.1(a).

<sup>37</sup> Penal Code § 667.6(c)-(d). Other sections provide for full-length consecutive terms for multiple counts of kidnapping, witness threats, and voluntary manslaughter. Penal Code § 1170.1(b); Penal Code §§ 1170.13-1170.16.

<sup>38</sup> Penal Code § 1170.1(c); *People v. McCart* (1982) 32 Cal.3d 338, 344 [185 Cal.Rptr. 284].

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Sometimes a subordinate term for a subordinate offense must be “stayed,” meaning that no punishment may be imposed, when a person is convicted of multiple crimes for the same act or course of conduct.<sup>39</sup> There are exceptions to this rule when the case involves violence toward more than one victim or multiple sex-related offenses.<sup>40</sup>

### 8.8 Adding Conduct Enhancements

The sentencing statutes provide for conduct enhancements when a crime involves certain circumstances. Conduct enhancements must be charged and proven to a jury or admitted by the person.<sup>41</sup> There are over two dozen different enhancements for conduct. Some of the most common conduct enhancements are for using or being armed a gun, inflicting great bodily injury, and committing a crime for the benefit of or in association with a gang.

A conduct enhancement must be attached to a particular charge, and the charge and its attached enhancement are treated as a unit for sentencing purposes. If a consecutively-sentenced charge is calculated as one-third of the mid-term, any conduct enhancements attached to the charge are likewise calculated at one-third the normal term.<sup>42</sup> There are some limits on how many enhancements can be imposed per charge.<sup>43</sup> In addition, the sentences for some types of conduct enhancements can be stricken in the interests of justice.<sup>44</sup>

### 8.9 Adding Recidivism Enhancements

The length of a felony sentence may be increased if the person has prior juvenile or adult convictions.

Some recidivism statutes provide alternative sentencing schemes that increase the length of the term for a charge. For example, the principal and subordinate terms will be doubled under the Two Strikes law if they have previously committed a serious or violent felony.<sup>45</sup> There are also alternative sentencing schemes that provide for indeterminate life terms, like the Three Strikes law and the One Strikes law (see § 9.2).

Most recidivism enhancements do not attach to any particular charge and can only be added one time to the total sentence. The most common such enhancements are one-year and three-year enhancements for prior prison terms, five-year enhancements for a prior serious felony conviction,

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<sup>39</sup> Penal Code § 654.

<sup>40</sup> *People v. Perez* (1979) 23 Cal.3d 545, 553 [153 Cal.Rptr. 40]; *People v. Kirk* (1990) 217 Cal.App.3d 1488, 1496 [267 Cal.Rptr. 126]; *People v. McFarland* (1989) 47 Cal.3d 798, 803 [254 Cal.Rptr. 331].

<sup>41</sup> Penal Code § 1170.1(e).

<sup>42</sup> Penal Code § 1170.1(a).

<sup>43</sup> See, e.g., Penal Code § 1170.1(f)-(h); Penal Code § 12022.53(e)(2)-(f).

<sup>44</sup> Penal Code § 1385.

<sup>45</sup> Penal Code § 667(e)(1); *People v. Riggs* (2001) 86 Cal.App.4th 1126, 1131-1132 [103 Cal.Rptr.890]; *People v. Nguyen* (1999) 21 Cal.4th 197, 203-204 [87 Cal.Rptr.2d 198].

and two-year enhancements for committing a crime while out on bail.<sup>46</sup> There are other enhancements that apply to specific types of offenses.

In addition, punishment for some types of recidivism enhancements can be stricken in the interests of justice.<sup>47</sup>

## 8.10 Sentences for Multiple Cases

Sometimes people will have multiple cases, either from the same county or different counties. When a person has multiple California commitments, the court which last sentences the person should take into account the previously imposed terms, decide whether the new case will run concurrent or consecutive to those terms, and issue an Abstract of Judgment that reflects all of the sentences.

However, sometimes this does not happen and a person arrives at CDCR with more than one Abstract of Judgment for the multiple cases. A CDCR records specialist will review the Abstracts, try to determine how the courts intended the sentences to run, and compute the total term (see § 8.25).<sup>48</sup>

Sometimes, a court will sentence a person to a felony term without knowing that another court has previously sentenced that person to a felony term in another case. Other times, a court simply may fail to state whether the multiple sentences are to run concurrently or consecutively. In such cases, the matter may be brought to the court's attention within 60 days after the date the person enters the CDCR on the second sentence. The court will then have 60 days to make a decision as to how the sentences will run. If the previous sentence is not brought to the court's attention in time, or the court does not act within the time limit, then the term on the second case must run concurrent with the previously-imposed term.<sup>49</sup>

Figuring out how multiple sentences relate to each other can be difficult. One issue is that a new sentence that runs concurrent to a previously-imposed term does not “relate back” to the start of the earlier term. In other words, the start date of the new concurrent term is the date the term is imposed, and the concurrent sentences run together only during the period that they overlap.<sup>50</sup> The exception to this rule is that when a person is serving a prison term and is later sentenced on an outstanding probation violation, a concurrent term on the probation violation will relate back to the start of the prison term.<sup>51</sup>

If the manner in which the multiple sentences are to run is unclear, the CDCR may write a letter asking the court to clarify what it intended to do. If there is a dispute, a person may have to petition the court to seek an order as to how the term relate to each other.

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<sup>46</sup> See, e.g., Penal Code § 667(a)-(b); Penal Code § 667.5(b); Penal Code § 12022.1.

<sup>47</sup> Penal Code § 1385.

<sup>48</sup> DOM § 72020.6.1.

<sup>49</sup> Penal Code § 669.

<sup>50</sup> *In re Roberts* (1953) 40 Cal.2d 745, 749 [255 P.2d 782].

<sup>51</sup> Penal Code § 1203.2a. The processes for requesting resolution of outstanding charges is discussed in Chapter 10.

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Other complications arise when a person has both California sentences and sentences imposed by a federal court or a court in another state. Some of these issues are discussed in §§ 10.28-10.29.

### 8.11 Ordering Payment of Restitution, Fines and Fees

A California felony sentence almost always includes orders to pay restitution, fines and fees.<sup>52</sup> Any restitution, fines or fees imposed by a sentencing court should be listed on the Abstract of Judgment.

Restitution is money that is used to compensate victims for economic losses suffered as a result of crimes. People with felony convictions can be ordered to pay three types of restitution. First, a sentencing court must order any person who commits a crime to pay direct restitution in an amount that fully compensates the victim or victim's family for any economic loss; the court must order full direct restitution unless there are compelling reasons for not doing so.<sup>53</sup> Second, a court must impose a restitution fine, payable to the State Restitution Fund unless there are compelling reasons for not doing so.<sup>54</sup> For a person convicted of a felony, the amount of the restitution fine can be between \$200 and \$10,000; the court has discretion to set the exact amount with consideration of the length of the sentence, number of offenses, other circumstances of the crime, and the person's ability to pay.<sup>55</sup> Third, if the sentence includes a period of parole, probation or post-release community supervision (PRCS), a court must impose a second restitution fine in the same amount as the as the main restitution fine; however, the additional restitution fine is to be suspended and will take effect only if the defendant is later subject to a revocation.<sup>56</sup>

There are numerous other fines and fees authorized by the sentencing laws. The amount of a particular fine or fee and whether a court must impose it, is determined by the statute that authorizes the fine or fee. Some commonly-applied fees are used to fund court security and administration or to compensate government agencies for costs of probation supervision or court-appointed attorneys.<sup>57</sup> Other types of fines or fees apply to specific types of crimes likes some drug or theft offenses.

Many of the fines and fees are subject to additional "penalty assessments" on top of the base amount.<sup>58</sup>

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<sup>52</sup> The *ex post facto* clause of the U.S. Constitution (Article I, § 10) prohibits applying a new penalty assessment or fine for a crime that was committed before the fine was enacted. *People v. Batman* (2008) 159 Cal.App.4th 587 [71 Cal.Rptr.3d 591]. However, new statutes imposing minor fees for non-punitive administrative purposes may be applied retroactively without violating *ex post facto* principles. *People v. Alford* (2007) 42 Cal.4th 749, 755-759 [68 Cal.Rptr.3d 310]; *People v. Fleury* (2010) 182 Cal.App.4th 1486, 1494 [106 Cal.Rptr.3d 722].

<sup>53</sup> Penal Code § 1202.4(f)-(k). Inability to pay is not a compelling reason for failing to order full restitution. Penal Code § 1202.4(g); *People v. Drant* (1999) 73 Cal.App.4th 577, 582 [86 Cal.Rptr.2d 469].

<sup>54</sup> Penal Code § 1202.4(b)-(e).

<sup>55</sup> Penal Code § 1202.4(b)-(d).

<sup>56</sup> Penal Code §§ 1202.44-1202.45; see *People v. Isaac* (2014) 224 Cal.App.4th 143, 148 [168 Cal.Rptr.3d 544 (court had no authority to impose revocation restitution fine on person who got term with only PRCS requirement prior to expansion of the fine to include PRCS)].

<sup>57</sup> Penal Code § 987.8 (attorneys' fees); Penal Code § 1203.1(b) (probation costs); Penal Code § 1465.8 (court security fee); Government Code § 70373 (court administration fee).

<sup>58</sup> Penal Code § 1464.

The law authorizes a sentencing court to order a person to pay some or all of the costs of incarceration in a state prison or local facility; however, the court must first hold a hearing and determine that the person has the ability to pay such costs.<sup>59</sup> This very rarely happens.

Restitution orders and other fines may be collected by the state in the same manner as other money judgments while the person is in custody and afterwards. The CDCR and local custody facilities are authorized to collect restitution fines.<sup>60</sup> (See § 2.31 for information on how CDCR collects restitution.) Any money or property that a person has outside of prison can be taken to satisfy a restitution fine.<sup>61</sup>

## 8.12 Requiring Registration, HIV Testing, DNA Samples and Other Orders

The DSL requires or allows sentencing courts to impose various other requirements on people convicted of specific types of crimes. For example, anyone convicted of a crime must be ordered to provide DNA samples for the Department of Justice databank.<sup>62</sup> Some people may be subjected to AIDS testing.<sup>63</sup> (See § 2.37 for discussion of privacy concerns regarding to DNA sample and AIDS test provisions on privacy grounds.) Others will suffer suspension of their driver's licenses.<sup>64</sup> Some people must or may be required to register with the police as having a sex-related offense, drug addiction issues, or gang affiliation.<sup>65</sup> Failing to comply with such orders may constitute a new criminal offense.

## DISCRETIONARY RESENTENCING

### 8.13 Recall of Sentence within 120 Days after Sentencing

The sentencing court has broad discretion to recall a prison commitment within 120 days after the original sentencing in order to consider imposing a lesser punishment.<sup>66</sup> The sentencing court retains the power to recall a commitment, and the 120-day period begins to run, even if the person is

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<sup>59</sup> Penal Code § 1203.1c; Penal Code § 1203.1m.

<sup>60</sup> Penal Code §§ 2085.5-2085.6; 15 CCR § 3097.

<sup>61</sup> Penal Code § 1214(a); Penal Code § 2085.7; *People v. Willie* (2005) 133 Cal.App.4th 43 [24 Cal.Rptr.3d 532].

<sup>62</sup> Penal Code § 296(a); Penal Code § 296.1(b). This provision applies retroactively, regardless of when the crime became a qualifying offense under the statute and regardless of when the offense was committed. *People v. Travis* (2006) 139 Cal.App.4th 1271, 1295 [44 Cal.Rptr.3d 177]. The taking of these samples is not considered to be “punishment,” so retroactive application does not violate the ex post facto clause of the U.S. Constitution. *United States v. Reynard* (9th Cir. 2006) 473 F.3d 1008, 1020-1021.

<sup>63</sup> See, e.g., Penal Code § 1202.1 (AIDS testing); The California Supreme Court has upheld the provision requiring certain people with sex-related offenses to submit to mandatory AIDS testing, even if the sex-related offense was committed prior to enactment of the statute. *People v. McVickers* (1992) 4 Cal.4th 81, 89-90 [13 Cal.Rptr.2d 850].

<sup>64</sup> Vehicle Code § 13350 et seq.

<sup>65</sup> See, e.g., Penal Code § 290 (sex offender registration); Health & Safety Code § 11590 (registration for people with narcotics-related crimes); Penal Code § 186.30 (registration for people convicted of gang-related crimes).

<sup>66</sup> Penal Code § 1170(d)(1). The 120-day timeline starts to run on the date the person is sentenced to CDCR custody. *People v. Cornelius* (1995) 31 Cal.App.4th 343 [37 Cal.Rptr.2d 156].



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pursuing a direct appeal of their conviction or sentence.<sup>67</sup> Although the recall order must be issued within 120 days of the original sentencing, the re-sentencing hearing itself may take place after the 120 day deadline.<sup>68</sup> Any new sentence cannot be longer than the sentence previously imposed, and the person must be given credit for time served on the previous sentence.<sup>69</sup>

The court may recall a sentence for any reason rationally related to lawful sentencing.<sup>70</sup> Because the court's discretion is very broad, any person in theory might be able to convince the court to exercise its power to reconsider the sentence. However, in practice, recall of a commitment is rare, especially in cases in which the sentence was set through a negotiated plea agreement. It is unlikely that a recall will be granted unless there is new information justifying an alternative sentence.

- ◆ If a person wants to seek a recall of commitment, they or their attorney should file a written request with the sentencing judge. The request should try to establish (1) why the sentencing court should recall the sentence, and (2) what alternative sentence or punishment would be appropriate in light of the crime, background and the possible collateral consequences of the sentence. Supportive letters from community members recommending an alternative sentence to prison can be presented to the court. The person must also show that the proposed alternative is an authorized sentence under the applicable laws. Thus, in drafting the request, the person or their attorney should consider the statutes and court rules that govern sentencing. If the judge denies the request for a recall, the denial cannot be appealed.<sup>71</sup>

Sometimes a court that is considering a recall will request an evaluation of the person from the CDCR and use that information to decide whether to order a recall. In such a case, CDCR staff will prepare an evaluation and recommendation.<sup>72</sup>

### 8.14 CDCR/BPH Request for Recall of Commitment: Compassionate Release

At any time during a prison term, the CDCR or the BPH can ask a court to recall the commitment to allow a “compassionate release” for a person who is terminally ill or medically incapacitated. Compassionate release is not available for people who are sentenced to death or to LWOP.<sup>73</sup>

To be eligible for compassionate release, a person must either have been diagnosed as terminally ill with less than six months to live or be permanently medically incapacitated with a medical condition that did not exist at the time of sentencing and renders them permanently unable to perform

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<sup>67</sup> *People v. Lockeridge* (1993) 12 Cal.App.4th 1752 [16 Cal.Rptr.2d 340].

<sup>68</sup> *People v. Chlad* (1992) 6 Cal.App.4th 1719, 1724, n. 5 [8 Cal.Rptr.2d 610].

<sup>69</sup> Penal Code § 1170(d)(1).

<sup>70</sup> Penal Code § 1170(d)(1). *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834] (court had power to recall even if reason was based on circumstances arising after original commitment).

<sup>71</sup> *Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1834 [13 Cal.Rptr.2d 709]; *People v. Chlad* (1992) 6 Cal.App.4th 1719 [8 Cal.Rptr.2d 610].

<sup>72</sup> DOM § 62020.8.

<sup>73</sup> Penal Code § 1170(e); 15 CCR § 3076(b).

activities of basic daily living, requiring 24-hour care. The court must also decide that the person would not pose a safety threat if released.<sup>74</sup>

Alternatively, a CDCR physician who determines a person meets the medical criteria for compassionate release should start the recall process. A person in prison, family member, or other advocate can also request a compassionate release by contacting the Chief Medical Officer (CMO) at the prison or the Secretary of the CDCR. Medical staff must then determine whether the person meets the medical criteria.<sup>75</sup> If the physician finds that they meets the medical criteria, the finding will be documented on a CDCR Form 128-C Chrono--Medical-Psychiatric-Dental, which will be reviewed by CMO or other high-ranking medical official. If the CMO agrees that the person meets the criteria, the CMO will submit the case to a Classification and Parole Representative (C&PR).<sup>76</sup>

The C&PR will review the chrono and the C-file to check that the person is not sentenced to death or LWOP. Prison staff will then explain the compassionate release process to the person and will identify a family member or other outside person who can act as an agent.<sup>77</sup> The correctional counselor will prepare an evaluation with information about the criminal history, commitment offense, active or potential detainers, in-prison behavior, mental health or disabilities, and post-release plans.<sup>78</sup> The C&PR will then review the evaluation and decide whether to recommend recall of commitment, taking into consideration the criminal history and prison behavior, any victim concerns, whether the court was aware of the medical condition at the time of sentencing, whether there are community resources available to meet the housing and medical and/or psychological needs, and whether the person still has the ability to be involved in criminal activity that could endangering public safety.<sup>79</sup> The warden will review the evaluation report and forward it to CDCR Headquarters.<sup>80</sup> There are fairly short timelines in which each of these step should be completed.<sup>81</sup>

If the CDCR decides to recommend a compassionate release for someone with a determinate-sentence, it will refer the case to the sentencing court. If the CDCR decides to recommend a compassionate release for a person with an indeterminate-sentence, it will send the case to the Board of Parole Hearings (BPH), which will decide during their next monthly executive meetings whether to refer the case to the sentencing court.<sup>82</sup> In exercising discretion as to whether to grant or deny compassionate release, the BPH may not rely on criteria other than those set forth in the governing statute.<sup>83</sup>

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<sup>74</sup> Penal Code § 1170(e); 15 CCR § 3076(b).

<sup>75</sup> Penal Code § 1170(e). 15 CCR § 3076.4. A person in prison or their family or advocate can also ask a court to request that the CDCR consider recommending recall of commitment. *People v. Laue* (1982) 130 Cal.App.3d 1055 [182 Cal.Rptr. 99].

<sup>76</sup> 15 CCR § 3076.4(a)-(b).

<sup>77</sup> 15 CCR § 3076.4(c).

<sup>78</sup> 15 CCR § 3076.4(d).

<sup>79</sup> 15 CCR §§ 3076.3-3076.4(e).

<sup>80</sup> 15 CCR § 3076.4(f).

<sup>81</sup> Penal Code § 1170(e); 15 CCR § 3076.4.

<sup>82</sup> 15 CCR § 3076.4(f)-(g).

<sup>83</sup> Penal Code § 1170(e); *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578, 595 [107 Cal.Rptr.3d 439].

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If CDCR staff refuse to recommends compassionate release, a person can challenge the decision by filing a CDCR Form 602 administrative appeal (see Chapter 1). If the 602 is unsuccessful, or if the BPH refused to recommend compassionate release, the person can file a state court petition for writ of habeas corpus (see Chapter 15).

The sentencing court must hold a hearing within 10 days of receiving the recall recommendation from the CDCR or BPH.<sup>84</sup> If the court grants recall and resentencing, the CDCR must release the person within 48 hours after receiving the court's order, unless the person agrees to a longer period of time.<sup>85</sup>

If a superior court denies compassionate release, a person may file a direct appeal in the court of appeal.<sup>86</sup>

### 8.15 CDCR/BPH Request for Recall of Commitment: Other Reasons

At any time during a person's sentence, the CDCR or the BPH can ask a court to recall the commitment and re-sentence the person for reasons other than compassionate release.<sup>87</sup> However, in practice the CDCR and BPH rarely initiate the process to recommend recall a sentence for other reasons.

The CDCR rules allow prison staff to initiate recall of a person's sentence in other circumstances. These include cases in which:

- ◆ It is evident from the person's exceptional behavior, beyond simply complying with all regulations and procedures during incarceration, that the person has changed as a person and would be a positive asset to the community;
- ◆ Information which was not made available to the court in pronouncing the person's sentence is brought to the attention of the CDCR Director, who deems the information would have influenced the sentence imposed by the court; or
- ◆ Circumstances have changed to the extent that the person's continued incarceration is not in the interests of justice.<sup>88</sup>

The BPH regulations also authorize referral of Intimate Partner Battering cases for recall of commitment.<sup>89</sup>

The process for recall of commitment for non-medical reasons is similar to that for compassionate releases, without the medical evaluations and treatment considerations. The correctional counselor prepares an evaluation. The C&PR reviews the evaluation and the Central file, and considers the commitment offense, criminal history and in-prison behavior, whether there are

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<sup>84</sup> Penal Code § 1170(e)(3).

<sup>85</sup> Penal Code § 1170(e)(9).

<sup>86</sup> *People v. Loper* (2015) 60 Cal.4th 1155 [184 Cal.Rptr.3d 715]. See Chapter 14 for information about direct appeals.

<sup>87</sup> Penal Code § 1170(d)(1).

<sup>88</sup> 15 CCR § 3076(a).

<sup>89</sup> 15 CCR § 2830.

adequate resources in the community to provide support, any victim concerns, and whether the case was highly publicized.<sup>90</sup> If the C&PR decides that the case appears suitable for a recall of the sentence, the case will be submitted to the warden. If the warden approves, the recommendation is forwarded to CDCR Headquarters. If the CDCR decides to recommend a compassionate release for a person with a determinate-sentence, it will refer the case to the sentencing court. If the CDCR decides to recommend a recall of commitment for a person serving an indeterminate life term, it will send the case to the BPH, which will decide whether to refer the case to the sentencing court.<sup>91</sup>

If CDCR staff refuse to recommend a recall of commitment, a person can challenge the decision by filing a CDCR Form 602 administrative appeal (see Chapter 1). If the 602 is unsuccessful, or if the BPH refused to recommend recall of commitment, the person can file a state court petition for writ of habeas corpus (see Chapter 15).

## 8.16 Recall of Commitment for Some Theft and Drug Crimes (Proposition 47)

Proposition 47 changed the law in November 2014 so that some property and drug-possession crimes are misdemeanors instead of being felonies or “wobblers.” These include many theft or minor property offenses involving amounts of \$950 or less and many simple drug possession offenses.<sup>92</sup>

A person who was convicted in the past for a felony that is now a misdemeanor under Proposition 47 can petition to have the felony conviction reduced to a misdemeanor. People who are still serving sentences for the crimes covered by Proposition 47 can ask for re-sentencing. People who have already finished serving their sentences for Proposition 47 crimes can ask for a re-designation (a record change). However, a person is ineligible for such reduction if they have a prior conviction for a “super-strike” offense or for most offenses that require registration as someone with sex-related offenses.<sup>93</sup>

To be considered for re-sentencing or a record change, a person must file a petition in the superior court where the property or drug conviction took place. The petition must be filed on or before November 4, 2022; a court can consider a later petition only if the petitioner can show good cause for not meeting the deadline.<sup>94</sup>

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<sup>90</sup> 15 CCR §§ 3076.1-13076.2(a)-(b)).

<sup>91</sup> 15 CCR § 3076.2(c)-(e).

<sup>92</sup> Penal Code § 459.5 (shoplifting); Penal Code §§ 470-476 (forgery); Penal Code § 476a(b) (passing check with insufficient funds, unless the person has three or more prior convictions for such crimes); Penal Code § 490.2 (theft); Penal Code § 496(a) (receiving stolen property); Penal Code § 666 (petty theft with a prior, unless the person has a prior conviction for a theft-type offense or abusing an elder or dependent adult and served a term or probation condition in custody for the prior and is required to register as someone with sex-related offenses for any reason); Penal Code § 496(a) (receiving stolen property); Health & Safety Code § 11350 (simple possession of many types of drugs, including cocaine and heroin); Health & Safety Code § 11357(a) (possession of concentrated cannabis); Health & Safety Code § 11377 (simple possession of many types of drugs, including methamphetamine). There may be arguments that equivalent offenses should also be deemed to be misdemeanors.

<sup>93</sup> Penal Code § 1170.18; see also Penal Code § 290(c); Penal Code § 667(e)(2)(C)(iv).

<sup>94</sup> Penal Code § 1170.18. Many county courts and public defender offices provide information about Proposition 47. County court addresses are in Appendix 15-A. Californians for Safety and Justice also provides information on their website at [www.safeandjust.org](http://www.safeandjust.org), or upon written request sent to: 700 Broadway, Suite 700, Oakland, CA 94612.

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The court will screen the petition to determine whether the case meets the criteria for reduction to a misdemeanor. If a person is not currently serving a sentence for the qualifying property or drug-possession crime, the court must designate the crime to be a misdemeanor. The court does not have to hold a hearing unless the petitioner requests a hearing.<sup>95</sup>

If a person is currently serving a sentence for the property or drug-possession crime, the court must re-sentence the person to a misdemeanor term unless the court decides that re-sentencing would pose an unreasonable risk of danger to public safety. “Unreasonable risk of danger to public safety” means an unreasonable risk that the person will commit a “super-strike” felony. In deciding if the person is dangerous, a court may consider the person’s criminal history, prison disciplinary record and record of rehabilitation, and any other evidence the court decides is relevant to public safety concerns. There should be an opportunity for a hearing before the court makes its decision. If the court grants re-sentencing, then the person shall be given credit for time served. The person will be subject to parole for one year unless the court exercises discretion not to impose parole.<sup>96</sup>

If the court denies resentencing or re-designation, the person may file a direct appeal in the court of appeal (see Chapter 14).

### 8.17 Recall of Commitment for Some Cannabis Crimes (Proposition 64)

Proposition 64, enacted in November 2016, makes it lawful for an adult 21 years of age or older (except for someone in prison or jail) to use cannabis or cannabis products, to possess up to six cannabis plants, and to possess, process, transport, purchase, obtain or give away to adults age 21 and older not more than 28.5 grams of cannabis, 8 grams of cannabis concentrates, and cannabis paraphernalia. There are still some restrictions on the time, place, and manner of these activities.<sup>97</sup> The laws were also amended to reduce juvenile and criminal penalties for many of the acts that still are crimes. Most juvenile and adult offenses related to cannabis and concentrated cannabis - possession, planting, harvesting, processing, possession for sale, transportation, importation, gifts, and sales - are now infractions or misdemeanors. Some crimes for planting, harvesting, processing, possession for sale, transportation, importation, gifts, and sales remain felonies; generally, felony punishment applies to these crimes if a person has one, two, or more prior convictions for the same type of offense, for any offense that requires registration for sex-related offenses, for any “super strike” offense as defined in the current Three Strikes Law, or in a few other circumstances. Proposition 64 does not change the penalties for driving a vehicle while under the influence of cannabis.<sup>98</sup>

Under Proposition 64, a person who is serving a criminal or juvenile sentence for activities that are legal or subject to lesser penalties under the new laws can petition for re-sentencing or for dismissal. Also, a person who has already completed the sentence for cannabis-related activities that are now legal or subject to lesser penalties can petition to have the old conviction dismissed or re-

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<sup>95</sup> Penal Code § 1170.18 (f)-(h).

<sup>96</sup> Penal Code § 1170.18 (b)-(e). Excess time served prior to resentencing cannot be applied to reduce or eliminate this parole period. *People v. Morales* (2016) 63 Cal.4th 399 [203 Cal.Rptr.3d 130]. However if the person is serving sentences for multiple felonies, and Proposition 47 resentencing of some but not all counts makes the person overdue for release, the time served can be applied to reduce a PRCS term. *People v. Steward* (2018) 20 Cal.App.5th 407 [228 Cal.Rptr.3d 887].

<sup>97</sup> Health & Safety Code §§ 11362-11362.3.

<sup>98</sup> Health & Safety Code §§ 11357-11360

designated as a misdemeanor or infraction. To start the process, the person must file a petition in the court in which conviction occurred.<sup>99</sup> There is no deadline for filing a petition. The court shall presume the petitioner is eligible for resentencing or dismissal unless the state presents clear and convincing evidence otherwise. If the person is eligible, the court must grant the petition unless the person is still serving the sentence and the court decides that resentencing would pose an unreasonable risk of danger to public safety. An unreasonable risk of danger to public safety means an unreasonable risk that the person will commit a “super strike” felony. A person who is currently in prison or jail and who is resentenced will get credit for time already served, but will be subject to either parole, PRCS, or probation for up to one year following release, unless the court decides not to impose a supervision requirement.<sup>100</sup>

## PRE-SENTENCE AND PRE-PRISON CREDITS

### 8.18 Overview of Pre-Sentence Credits

People who are in custody while waiting to be convicted and sentenced should receive time credits for all of the actual days spent in custody. Many people are also entitled to additional credits for good conduct during the time they are awaiting conviction and sentencing.<sup>101</sup>

It is the sentencing court’s duty to calculate pre-sentence credits for both actual time and good conduct. During the sentencing hearing, the court should state what credits are being awarded and the credits should be entered on the Abstract of Judgment.<sup>102</sup> If a person has earned more credit than the length of the sentence, the excess credits should be applied to any period of parole or PRCS.<sup>103</sup>

### 8.19 Pre-Sentence Credits for Actual Days in Custody

A person normally must receive credit for every actual day served in custody awaiting conviction and sentencing.<sup>104</sup>

The definition of “custody” is fairly broad. Credit must be awarded for time spent in jail or in a hospital, rehabilitation center, work furlough facility or half-way house.<sup>105</sup> A person who is placed on home detention is entitled to pre-sentence credit if the detention imposes significant restrictions

<sup>99</sup> Proposition 64 petition forms are on the California courts website at [www.courts.ca.gov/prop64.htm](http://www.courts.ca.gov/prop64.htm). People may be able to obtain forms from a public defender’s office or superior court. Court addresses are in Appendix 15-A.

<sup>100</sup> Health & Safety Code § 11361.8; see also Penal Code § 667(e)(2)(C)(iv) (list of “super strikes”).

<sup>101</sup> Penal Code § 2931(a). A person can waive the right to pre-sentence credits for actual time and/or good conduct as part of a plea agreement. *People v. Arnold* (2004) 33 Cal.4th 294, 302 [14 Cal.Rptr.3d 840]; *People v. Black* (2009) 176 Cal.App.4th 145, 154 [97 Cal.Rptr.3d 338].

<sup>102</sup> Penal Code § 2900.5(d). For a brief period in 2010 and 2011, the CDCR had responsibility for calculating pre-sentence conduct credits for people sentenced to prison; the authority for calculating all pre-sentence credits has since been returned to the courts. *People v. Tinker* (2013) 212 Cal.App.4th 1502, 1508-1509 [151 Cal.Rptr.3d 869].

<sup>103</sup> Penal Code § 1170(a)(3); *In re Sosa* (1980) 102 Cal.App.3d 1002, 1005-1006 [162 Cal.Rptr. 646].

<sup>104</sup> Penal Code § 2900.5. The statute became effective in 1972, but must be applied retroactively. *In re Kapperman* (1974) 11 Cal.3d 542, 545 [114 Cal.Rptr. 97].

<sup>105</sup> Penal Code § 2900.5(a); 85 Ops.Cal.Atty.Gen. 106 (2002) (home detention programs); *People v. Davenport* (2007) 148 Cal.App.4th 240, 247 [55 Cal.Rptr.3d 473] (credit for time in residential drug treatment program).

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on movement.<sup>106</sup> Credit must be granted even if the time was spent in an out-of-state jail or other facility and the person was resisting extradition (being brought back to California).<sup>107</sup> A person is also entitled to credit for time spent in a CDCR facility undergoing a pre-sentence evaluation.<sup>108</sup> However, no credit for time served may be awarded for time in non-residential placements such as work release programs or outpatient drug rehabilitation programs.<sup>109</sup> However, a person does not earn any pre-sentence credits for time spent in a state hospital under a civil insanity commitment that suspends the criminal case proceedings.<sup>110</sup>

A person is entitled to pre-sentence credits “only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted.”<sup>111</sup> Thus, in order to receive pre-sentence credit, the person must show that they could have been free during the period of pre-sentence custody “but for” the conduct leading to the conviction and sentence.<sup>112</sup> Applying this rule can be tricky when a person is subject to parole or probation revocation in addition to new criminal charges, is already serving a sentence when new charges are filed, or has multiple criminal charges or cases filed at different times.

A person could be facing both parole or probation revocation charges and criminal charges at the same time. If the parole or probation revocation term is based only on the same conduct underlying the criminal charge, then the person should be granted credit toward the criminal term even though credit for the same period in custody is applied to the revocation term.<sup>113</sup> However, if parole or probation is revoked based on any conduct other than the criminal charge (such as failure to report to the parole officer), then the person gets custody credit on the revocation term but not on the criminal term. The person will start earning pre-sentence credit toward the criminal case only if and when the parole or probation revocation term ends while they are still awaiting sentencing on the criminal case.<sup>114</sup> The person may also earn credit toward the criminal case for periods prior to the

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<sup>106</sup> Penal Code § 2500.5 (a); *People v. Raygoza* (2016) 2 Cal.App.5th 593 [206 Cal.Rptr.3d 347] (home confinement with electronic monitoring); but see *People v. Anaya* (2007) 158 Cal.App.4th 608, 610, 613 [70 Cal.Rptr.3d 47] (not in custody where only requirement was to stay in county and be home to make phone call once daily).

<sup>107</sup> *In re Watson* (1977) 19 Cal.3d 646, 648 [139 Cal.Rptr. 609].

<sup>108</sup> Penal Code § 1203.03(g).

<sup>109</sup> *People v. Richter* (2005) 128 Cal.App.4th 575, 580 [27 Cal.Rptr.3d 198]; *People v. Schnaible* (1985) 165 Cal.App.3d 275, 276 [211 Cal.Rptr. 530].

<sup>110</sup> *People v. Mendez* (2007) 151 Cal.App.4th 861, 863-864 [60 Cal.Rptr.3d 182]; *In re Huffman* (1986) 42 Cal.3d 552, 553-554 [229 Cal.Rptr. 789]; *People v. Waterman* (1986) 42 Cal.3d 565, 569 [229 Cal.Rptr. 796]; but see *People v. Phoenix* (2014) 231 Cal.App.4th 1119, 1128-1129 [180 Cal.Rptr.3d 540] (person who was serving prison term, but then was sent to state hospital for competency proceedings in a new case, was entitled to credit for that time because he would have been in prison if not at hospital).

<sup>111</sup> Penal Code § 2900.5(b); *People v. Bruner* (1995) 9 Cal.4th 1178, 1180-1181 [40 Cal.Rptr.2d 534]; *In re Joyner* (1989) 48 Cal.3d 487, 489 [256 Cal.Rptr.785].

<sup>112</sup> *In re Joyner* (1989) 48 Cal.3d 487, 489, 493-494 [256 Cal.Rptr. 785].

<sup>113</sup> *People v. Kennedy* (2012) 209 Cal.App.4th 385, 392-394 [147 Cal.Rptr.3d 123].

<sup>114</sup> *People v. Bruner* (1995) 9 Cal.4th 1178, 1180 [40 Cal.Rptr.2d 534]; *People v. Shabazz* (2003) 107 Cal.App.4th 1255, 1258 [132 Cal.Rptr.2d 708]; *In re Nickles* (1991) 231 Cal.App.3d 415, 418-419 [282 Cal.Rptr. 411]. The rule applies even when the parole revocation and criminal conduct are closely related. *People v. Stump* (2009) 173 Cal.App.4th 1264, 1266-1267 [93 Cal.Rptr.3d 429] (no pre-sentence credit for DUI case because driving without parole agent’s permission and drinking alcohol were separate grounds for parole violations).

placement of the parole hold or summary revocation of probation that are not credits toward any revocation term.<sup>115</sup>

Sometimes a person will already be serving a jail or prison sentence and will then be charged in a new criminal case. The person will not earn any pre-sentence credits on the new case unless and until the original prison or jail term is discharged. While the original term remains in effect, the person only receives credit for time served against the original term.<sup>116</sup> One exception is that when a person who is serving a jail term is sent to prison in another case for a pre-sentence diagnostic evaluation under Penal Code § 1203.03, they may get credit for that time against both sentences.<sup>117</sup> Also, if a person is serving a term and then receives a consecutive sentence in a new case that becomes the controlling term, the court must re-calculate the credit for actual time served in the first case.<sup>118</sup> This is true even if the two cases are from different counties.<sup>119</sup>

When a person faces multiple separate criminal cases and the charge that was filed first is dismissed, a court cannot grant credit for the time in which they were in custody solely because of the first charge. The person will not start earning credit on the second case until the date the second charge was filed.<sup>120</sup>

Sometimes a person is sentenced in a single case in which several counts were charged at different times, or in separate cases arising in the same or different counties, or in separate cases in different states. The main factors that affect the determination as to which period of time should be credited against which cases are the dates of custody and charging, whether the cases are sentenced in the same or separate proceedings, and whether the charges are sentenced concurrently or consecutively:

- ◆ If concurrent sentences are imposed in the same proceeding (even for unrelated conduct,) credit for actual time served applies against each of the terms.<sup>121</sup> The “same proceeding” means there was one sentencing hearing for several offenses charged under one case number or in separately-filed cases.
- ◆ If concurrent sentences are imposed in separate proceedings, credit will be awarded against only one case for any period of pre-sentence custody. In other words, if the time in custody has been credited against the first sentence that was imposed, that same time

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<sup>115</sup> See *People v. Pruitt* (2008) 161 Cal.App.4th 637, 639 [74 Cal.Rptr.3d 368].

<sup>116</sup> *In re Rojas* (1979) 23 Cal.3d 152,156 [151 Cal.Rptr. 649].

<sup>117</sup> *People v. Gibbs* (1991) 228 Cal.App.3d 420, 421 [278 Cal.Rptr. 338]; *People v. Goodson* (1990) 226 Cal.App.3d 277, 282 [277 Cal.Rptr. 60].

<sup>118</sup> *People v. Saibu* (2011) 191 Cal.App.4th 1005, 1012-1013 [120 Cal.Rptr.3d 84]; *People v. Lacebal* (1991) 233 Cal.App.3d 1061, 1065-1066 [285 Cal.Rptr. 6].

<sup>119</sup> *People v. Phoenix* (2014) 231 Cal.App.4th 1119, 1126 [180 Cal.Rptr.3d 540].

<sup>120</sup> *In re Ricky H.* (1981) 30 Cal.3d 176, 191 [178 Cal.Rptr. 324, 333]; *In re Bustos* (1992) 4 Cal.App.4th 851, 853 [5 Cal.Rptr.2d 767].

<sup>121</sup> *People v. Adrian* (1987) 191 Cal.App.3d 868, 875-876 [236 Cal.Rptr. 685]; *People v. Schuler* (1977) 76 Cal.App.3d 324, 333 [142 Cal.Rptr. 798].



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cannot be credited against a sentence imposed at a later separate hearing.<sup>122</sup> However, if pre-sentence actual time is attributable to multiple cases, and the credit exceeds the length of the sentence on the first case, then the remaining credit should be applied to the sentence on the other case.<sup>123</sup>

- ◆ If consecutive sentences are imposed, either in the same or separate proceedings, then credit for all periods of pre-sentence custody is applied once toward the total aggregate term.<sup>124</sup>

If a person is sentenced in two different proceedings and the conviction for one of the cases is later reversed on appeal, they may need to seek a correction of credits in the remaining case in order to get appropriate pre-sentence credits.<sup>125</sup>

### 8.20 Overview of Pre-Sentence Credits for Good Conduct and Programming

Many people who get credit for actual days served in pre-sentence custody are eligible to earn additional credits for good behavior during that time. Pre-sentence conduct credits are sometimes referred to as “Section 4019” credits.<sup>126</sup> The sentencing courts have responsibility for doing pre-sentence credit calculations.<sup>127</sup>

Conduct credits can be awarded for any type of pre-sentence time that counts as being “in custody,” including time in jail, in a residential program, or on monitored home detention.<sup>128</sup> There is an exception for probation revocation cases in that pre-sentence conduct credits will not be awarded for time spent in a residential treatment or detention program as a condition of the prior grant of probation, even though such time counts as actual days in pre-sentence custody.<sup>129</sup>

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<sup>122</sup> *In re Joyner* (1989) 48 Cal.3d 487, 489 [256 Cal.Rptr.785] (no credit for pre-sentence time in California case where a person was already serving a prison term in a separate Florida case, even though California term ordered to run concurrent to Florida term); see also *People v. Odom* (1989) 211 Cal.App.3d 907, 910-911 [259 Cal.Rptr. 827].

<sup>123</sup> *People v. Torres* (2012) 212 Cal.App.4th 440, 442-447 [150 Cal.Rptr.3d 908] (when a person is resentenced to consolidated consecutive terms and the prior term becomes a subordinate term sentence that is less than the credits earned on that case, the court must allocate the “unused” credits to the new sentence); *People v. Gonzalez* (2006) 138 Cal.App.4th 246, 252-254 [41 Cal.Rptr.3d 267].

<sup>124</sup> Penal Code § 2900.5(b).

<sup>125</sup> *Ire Marquez* (2003) 30 Cal.4th 14, 17 [131 Cal.Rptr.2d 911] (a person was sentenced on case in Santa Cruz County, then taken to Monterey County for sentencing on a different case; the Monterey court did not give him credit for the time he spent in custody between the day he was sentenced in Santa Cruz and the day he was sentenced in the Monterey; when the Santa Cruz conviction was later reversed on appeal, the time between the two sentencing hearings counted as pre-sentence credit for the Monterey case).

<sup>126</sup> Penal Code § 4019.

<sup>127</sup> Penal Code § 4019; see also *People v. Tinker* (2013) 212 Cal.App.4th 1502, 1508-1509 [151 Cal.Rptr.3d 869].

<sup>128</sup> Penal Code § 4019. (a); *People v. Mobley* (1983) 139 Cal.App.3d 320, 323-324 [188 Cal.Rptr. 583]; 85 Ops.Cal.Atty.Gen. 106 (2002) (home detention program with strict limits on movement); see also *People v. Engquist* (1990) 218 Cal.App.3d 228, 230 [267 Cal.Rptr.17] (time spent in prison undergoing a pre-sentence diagnostic evaluation pursuant to Penal Code section 1203.03).

<sup>129</sup> *People v. Silva* (2003) 114 Cal.App.4th 122, 125-125 [7 Cal.Rptr.3d 473]; *People v. Moore* (1991) 226 Cal.App.3d 783, 787 [277 Cal.Rptr. 82].

A person who is eligible to earn pre-sentence conduct credits is not entitled to such credits if they do not have good behavior and programming in custody.<sup>130</sup> Before pre-sentence conduct credits can be denied, the person must get to notice of any disciplinary violation and an opportunity to defend against the allegation.<sup>131</sup>

The laws governing pre-sentence conduct credits have been amended many times. The conduct credits a person earns for any particular period of good behavior depends on the dates of custody and the type of current crimes or prior offenses.<sup>132</sup> The following sections summarize the rules as of certain key dates.

## 8.21 Current Laws on Pre-Sentence Credits for Good Conduct and Programming

The current law applies to anyone in custody for a crime committed on or after October 1, 2011.<sup>133</sup>

Most people can now earn “half time” good conduct credits of two days for every two days actually served. This applies regardless of whether the person receives probation, a jail sentence, or a prison sentence. There are no 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 a person with sex-related offenses.<sup>134</sup> A person who serves an odd number of actual days gets one less day of conduct credit than the actual days served.<sup>135</sup> A few exceptions apply, as described in the following paragraphs.

People who are sentenced for a “violent felony” listed in Penal Code § 667.5 are limited to pre-sentence conduct credits of 15 percent of the actual days served.<sup>136</sup> The 15 percent limit applies

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<sup>130</sup> Penal Code § 4019(b)-(c).

<sup>131</sup> *People v. Duesler* (1988) 203 Cal.App.3d 273, 276-277 [249 Cal.Rptr. 775].

<sup>132</sup> See e.g., *People v. Chillelli* (2014) 225 Cal.App.4th 581, 588-590 [170 Cal.Rptr.3d 395] (where continuing crime straddles changes in conduct credit law, court does not violate ex post facto prohibition by applying less favorable law in effect during last part of crime period); *People v. Ramirez* (2014) 224 Cal.App.4th 1078, 1084-1086 [169 Cal.Rptr.3d 260] (in case where some counts were committed prior to October 1, 2011 and some were committed after, defendant gets the benefit of the new more favorable credit conduct rule).

<sup>133</sup> *People v. Miles* (2013) 220 Cal.App.4th 432, 235 [163 Cal.Rptr.3d 184]; *People v. Kennedy* (2012) 209 Cal.App.4th 385, 388 [147 Cal.Rptr.3d 123]; *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1548 [145 Cal.Rptr.3d 24].

<sup>134</sup> Penal Code § 4019; see *People v. Chillelli* (2014) 225 Cal.App.4th 581, 592 [170 Cal.Rptr.3d 395]; *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 55-56 [149 Cal.Rptr.3d 313]; see also *People v. Thomas* (1999) 21 Cal.4th 1122, 1127-1130 [90 Cal.Rptr.2d 642] (people sentenced under Three Strikes law are entitled to full pre-sentence credits under current Penal Code section 4019).

<sup>135</sup> *People v. Whitaker* (2015) 238 Cal.App.4th 1354 [190 Cal.Rptr.3d 490].

<sup>136</sup> Penal Code § 2933.1. This statute became effective on September 21, 1994, and applies only to people sentenced for crimes committed on or after that date. The credit limitation does not apply to a person whose current conviction is not one of the violent felonies listed in Penal Code § 667.5 but who receives a life sentence under a recidivist statute such as the Three Strikes law. *People v. Thomas* (1999) 21 Cal.4th 1122 [90 Cal.Rptr.2d 642]. Penal Code § 2933.1 applies to any person convicted of a crime that was added to the list of violent felonies in Penal Code § 667.5(c) before the person’s crime was committed. *People v. Van Buren* (2001) 93 Cal.App.4th 875, 878-882 [113 Cal.Rptr.2d 510]; Penal Code § 2933.1. Prior juvenile adjudications for serious or violent felonies do not count as “convictions” for purposes of § 4019 credits. *People v. Pacheco* (2011) 194 Cal.App.4th 343, 346 [124 Cal.Rptr.3d 308].

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to the entire pre-sentence period even if some of the felony counts are not for violent felonies.<sup>137</sup> The limit applies even if the sentence for the violent felony is stayed or stricken.<sup>138</sup>

Some people cannot earn any presentence credits. These are:

- ◆ People convicted of murder;<sup>139</sup> the bar applies to both the indeterminate term for murder and any consecutive determinate sentences for other offenses.<sup>140</sup>
- ◆ People convicted of a few particularly serious offenses, who have two or more prior convictions and prison terms for those types of offenses.<sup>141</sup>
- ◆ People convicted for certain types of sex offenses under the “One Strike” law, if the crime was committed on or after September 20, 2006.<sup>142</sup>

In addition to pre-sentence conduct credits, as of January 1, 2017, county officials are authorized to award additional pre-sentence credits for participation in programs and meeting performance objectives. These credits can be earned in a maximum of six weeks of credit for any 12 months of continuous custody.<sup>143</sup>

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<sup>137</sup> *People v. Ramos* (1996) 50 Cal.App.4th 810, 816 [58 Cal.Rptr.2d 24]. The limit applies even to misdemeanor terms served consecutively to the violent felony. *People v. Hamlin* (2009) 170 Cal.App.4th 1412 [89 Cal.Rptr.3d 402]; *In re Mallard* (2017) 7 Cal.App.5th 1220 [213 Cal.Rptr.3d 380]

<sup>138</sup> *People v. Duff* (2010) 50 Cal.4th 787, 800-801 [114 Cal.Rptr.3d 233]; *In re Pope* (2010) 50 Cal.4th 777, 781 [114 Cal.Rptr.3d 225]; *In re Borlik* (2011) 194 Cal.App.4th 30, 39 [124 Cal.Rptr.3d 410].

<sup>139</sup> Penal Code § 2933.2(c); *People v. Wheeler* (2003) 105 Cal.App.4th 1423, 1432 [129 Cal.Rptr.2d 916], *People v. McNamee* (2002) 96 Cal.App.4th 66, 68 [116 Cal.Rptr.2d 625]; *People v. Herrera* (2001) 88 Cal.App.4th 1353, 1366-1367 [106 Cal.Rptr.2d 793]. This statute became effective on June 3, 1998, and does not apply to people whose crimes were committed before that date. *People v. Ly* (2001) 89 Cal.App.4th 44, 47 [106 Cal.Rptr.2d 818]; see *People v. Cooper* (2002) 27 Cal.4th 38, 40 n. 2 [115 Cal.Rptr.2d 219]. Note that this provision does not prohibit people convicted of murder from receiving pre-sentence credits for days actually served. *People v. Taylor* (2004) 119 Cal.App.4th 628, 645-647 [14 Cal.Rptr.3d 550].

<sup>140</sup> Penal Code § 2933.2(c); *People v. Wheeler* (2003) 105 Cal.App.4th 1423, 1432 [129 Cal.Rptr.2d 916]; *People v. McNamee* (2002) 96 Cal.App.4th 66, 68 [116 Cal.Rptr.2d 625]. This bar applies only to crimes committed on or after June 3, 1998. *People v. Moon* (2011) 193 Cal.App.4th 1246 [123 Cal.Rptr.3d 448]; *People v. Reyes* (2008) 165 Cal.App.4th 426, 437 [80 Cal.Rptr.3d 619]. The credit bar applies even if the murder sentence is stayed. *People v. Duff* (2010) 50 Cal.4th 787, 800-801 [114 Cal.Rptr.3d 233]. The bar also applies even if the person is granted probation. *People v. Moon* (2011) 193 Cal.App.4th 1246, 1250-1253 [123 Cal.Rptr.3d 448].

<sup>141</sup> Penal Code § 2933.5, for specified crimes committed on or after January 1, 1991; *People v. Goodloe* (1995) 37 Cal.App.4th 485, 488 [44 Cal.Rptr.2d 15].

<sup>142</sup> Penal Code 667.61; *People v. Adams* (2018) 28 Cal.App.5th 170 [239 Cal.Rptr.3d 2].

<sup>143</sup> Penal Code § 4019.4.

## 8.22 Previous Laws on Pre-Sentence Credits for Good Conduct and Programming

For time served **prior to January 25, 2010**, most people were eligible to earn only up to two days of conduct credit for every four days actually served (“third time”).<sup>144</sup> There were the same exceptions as under the current law.

- ◆ From **January 25, 2010 through September 27, 2010**, most people were eligible to earn two days of conduct credit for every two days actually served (“half time”).<sup>145</sup> The same exceptions applied as under the current law. There were also additional exceptions -- people could earn only two days of conduct credit for each four days actually served (“third time”) if they were (1) required to register as a person with sex-related offenses under Penal Code § 290 et seq., (2) being sentenced for a serious felony or with a prior conviction for a serious felony as defined in Penal Code § 1192.7(c), or (3) had a prior conviction for a violent felony as defined in Penal Code § 667.5(c).<sup>146</sup>

For people in jail prior to sentencing for crimes committed between **September 28, 2010 and September 30, 2011**, there were a few more changes. For people sentenced to prison, the CDCR was given the responsibility for calculating such credits. Also, the “half-time” formula was changed slightly to one day of conduct credit for each day served in jail starting from the day of arrest and until arriving in state prison.<sup>147</sup> Credit-earning was reduced for people sentenced to county jail time or probation,

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<sup>144</sup> Former Penal Code § 4019. To calculate the number of conduct credits under this formula, divide the actual days in custody by four and multiply the whole number by two. If the number of days actually served is not exactly divisible by four, and there is a remainder of one, two, or three days, the person gets no conduct credit for those remainder days. *People v. King* (1992) 3 Cal.App.4th 88 [4 Cal.Rptr.2d 723]; *People v. Smith* (1989) 211 Cal.App.3d 523 [259 Cal.Rptr. 515]. When a person spends several non-continuous periods in custody prior to sentencing, the court should add all the periods together and then calculate the conduct credits, rather than calculating the conduct credits for each separate period and then combining them. *People v. Culp* (2002) 100 Cal.App.4th 1278 [122 Cal.Rptr.2d 924]; *People v. Dailey* (1992) 8 Cal.App.4th 1182 [11 Cal.Rptr.2d 136]. People convicted under the Two or Three Strikes law were entitled to full pre-sentence credits under section 4019, even though they are not eligible to earn full credits once they are in prison. Penal Code § 667(c)(5); *People v. Thomas* (1999) 21 Cal.4th 1122 [90 Cal.Rptr.2d 642]. The provision allowing people being held pre-sentence to earn only two-for-four credits did not violate equal protection, even though it meant that someone detained prior to trial was actually incarcerated longer than a person who spent the same term entirely in state prison with eligibility for one-for-one credits. *People v. Devore* (1990) 218 Cal.App.3d 1316 [267 Cal.Rptr. 698]. A person who has been in custody less than the base period for conduct credit calculation is still entitled to conduct credit as long as they are ultimately sentenced to at least that amount of time. See *People v. Dieck* (2009) 46 Cal.4th 934, 937 [95 Cal.Rptr.3d 408].

<sup>145</sup> Former Penal Code § 4019(b)-(c), (f) (Stats.2009, 3d Ex.Sess., ch. 28, § 50). The amendment applies only to time served on or after January 25, 2010. *People v. Brown* (2012) 54 Cal.4th 314 [142 Cal.Rptr.3d 824]; see also *People v. Denham* (2013) 218 Cal.App.4th 800, 815 [159 Cal.Rptr.3d 812].

<sup>146</sup> Former Penal Code § 4019(b)-(c), (f) (Stats.2009, 3d Ex.Sess., ch. 28, § 50 [Senate Bill xxx 18]). Prior juvenile adjudications for serious or violent felonies do not count as “convictions” for purposes of § 4019 credits. *People v. Pacheco* (2011) 194 Cal.App.4th 343 [124 Cal.Rptr.3d 308]. A prior serious or violent felony conviction that makes a person ineligible for full conduct credits need not be pled and proven and a trial court cannot strike such a prior conviction just to make a person eligible for full credits. *People v. Lara* (2012) 54 Cal.4th 896, 903-904 [144 Cal.Rptr.3d 169].

<sup>147</sup> Former Penal Code § 2933(e)(Stats.2010, ch. 426, § 2 [Senate Bill 78]).

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who received a maximum of “third time” (two days conduct credit for each four days served) for time in the county jail, both before and after sentencing.<sup>148</sup>

### 8.23 Credits Upon Re-sentencing

Sometimes an appellate court will modify a sentence on appeal; the sentencing court can simply issue a new Abstract of Judgment reflecting the modification with no need to hold a new sentencing hearing or re-calculate pre-sentence credits.<sup>149</sup> However, sometimes an appellate court vacates or modifies a judgment and remands a case for proceedings that may include a new trial, plea agreement and/or sentencing hearing. In such cases, the court that conducts the re-sentencing must grant the defendant proper credit against the new sentence for time served on the prior judgment.<sup>150</sup> The credits should be correctly reflected on the new Abstract of Judgment.

When a case is remanded only for re-sentencing, the sentencing court is supposed to award credit for all actual days served in both local custody and prison prior to the re-sentencing. The court also must award good conduct credits for the time in local custody prior to the original sentencing. However, any good conduct credits earned since the original sentencing are not to be computed by the re-sentencing court. Instead, all conduct credits for time after the original sentences are to be computed by the CDCR using the formulas that apply to post-sentence in-prison time.<sup>151</sup> The same rules apply when a sentencing court resentsences a person under Penal Code § 1170(d) or (e) (see §§ 8.14-8.15) or under Penal Code § 1170.126 (Proposition 36), Penal Code § 1170.18 (Proposition 47, see § 8.16) or Health & Safety Code § 11361.8 (Proposition 64, see § 8.17).<sup>152</sup>

More complicated issues can arise when a conviction is reversed, and the person is later re-convicted and re-sentenced. In such a case, the re-sentencing court is supposed to grant credit for all actual days served prior to the re-sentencing. The court should also award pre-sentence conduct credit for (a) the time in custody prior to the original sentencing and (b) the time in custody after the original judgment was vacated and prior to the re-sentencing. However, the time between the original

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<sup>148</sup> Former Penal Code § 4019(g) (Stats.2010, ch. 426, § 2 [Senate Bill 78]). This limit was not applied to a person who was sentenced to jail time for a felony committed between September 28, 2010 and October 1, 2011 where the person could only have been sentenced to a prison term (and would have been entitled to full half-time credits) under the laws in effect at the time they committed the offense. *People v. Hul* (2013) 213 Cal.App.4th 182, 185 [152 Cal.Rptr.3d 319].

<sup>149</sup> *People v. Dutra* (2006) 145 Cal.App.4th 1359, 1366-1367 [52 Cal.Rptr.3d 528].

<sup>150</sup> Penal Code § 2900.1.

<sup>151</sup> *People v. Buckhalter* (2001) 26 Cal.4th 20, 29 [108 Cal.Rptr.2d 625] (person sentenced under Three Strikes Law ineligible for conduct credit for time served after original sentencing but prior to re-sentencing).

<sup>152</sup> *People v. Johnson* (2004) 32 Cal.4th 260, 263 [8 Cal.Rptr.3d 761] (Penal Code § 1170(d)); *People v. Garner* (2016) 244 Cal.App.4th 1113, 1117 [198 Cal.Rptr.3d 788] (Penal Code § 1170.126).

sentencing and the reversal of the original judgment is post-conviction time to be calculated by the CDCR under the rules for in-prison conduct credits.<sup>153</sup>

Under Proposition 36, some people sentenced under the Three Strikes Law were able to be resentenced to lower terms and under Proposition 47, some people who were sentenced to prison for theft or drug felonies have had their charges reduced to misdemeanors (see § 8.16). In those cases, any excess credits earned prior to resentencing may not be used to reduce the required parole or PRCS period.<sup>154</sup> However, the excess credits may be applied to pay off any fines owed at a rate of \$125 for each extra day served.<sup>155</sup>

A person who has been re-sentenced should carefully check the new Abstract of Judgment prepared by the court and the new LSS prepared by the CDCR to ensure that the CDCR's release date calculation reflects appropriate credits for all actual days served and all periods of good conduct. People who have concerns about whether their presentence credits are correct should follow the steps discussed in §§ 8.41-8.42.

## 8.24 Credits After Recall of Division of Juvenile Justice (DJJ) Placement

Persons convicted of a felony in adult court, but who were under 21 years of age at the time of the offense, can be committed to the CDCR's Division of Juvenile Justice (DJJ).<sup>156</sup> If the DJJ decides that the person is not suitable for DJJ placement, they may refer the person back to the sentencing court for commitment to state prison.<sup>157</sup> Upon recall of a DJJ placement, credit must be given for actual days spent in the DJJ.<sup>158</sup> The court should also grant good conduct credit for time spent in local custody prior to the original sentencing and after removal from the DJJ.<sup>159</sup> However, a person who is sentenced to state prison after recall of a DJJ commitment is not entitled to conduct credits for the DJJ time.<sup>160</sup>

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<sup>153</sup> Penal Code § 2900.1; *People v. Donan* (2004) 117 Cal.App.4th 784, 787 [11 Cal.Rptr.3d 904] (post-sentence conduct credits to be calculated by the CDCR applied to the time between first sentencing and reversal of the first conviction); *In re Martínez* (2003) 30 Cal.4th 29, 37 [131 Cal.Rptr.2d 921] (conviction under the Three Strikes Law was reversed and the person was then re-convicted and sentenced under the Two Strikes Law. Conduct credits for time between original sentencing and reversal were to be calculated by the CDCR using 20 percent limit on conduct credits for second-strikers).

<sup>154</sup> *People v. Morales* (2016) 63 Cal.4th 399 [203 Cal.Rptr.3d 130]; *People v. Superior Court (Rangel)* (2016) 4 Cal.App.5th 410 [208 Cal.Rptr.3d 636].

<sup>155</sup> *People v. Pinon* (2016) 6 Cal.App.5th 956 [21 Cal.Rptr.3d 787].

<sup>156</sup> Welfare & Institutions Code § 1731.5. This agency was formerly known as the California Youth Authority (CYA).

<sup>157</sup> Welfare & Institutions Code §§ 1737-1737.1.

<sup>158</sup> Welfare & Institutions Code § 1737.

<sup>159</sup> *People v. Garcia* (1987) 195 Cal.App.3d 191, 195-198 [240 Cal.Rptr. 703].

<sup>160</sup> *People v. Austin* (1981) 30 Cal.3d 155, 158 [178 Cal.Rptr. 312]; *People v. Linear* (1988) 203 Cal.App.3d 508 [249 Cal.Rptr. 836]; *People v. Acosta* (1985) 170 Cal.App.3d 1033, 1037 [216 Cal.Rptr. 841]; *People v. Lawrence* (1983) 144 Cal.App.3d 290, 293-294 [192 Cal.Rptr. 165]; *People v. Reynolds* (1981) 116 Cal.App.3d 141, 147 [171 Cal.Rptr. 461].

## 8.25 CDCR Review of the Sentence and Pre-Sentence Credits

When a person arrives in the CDCR, case records staff review the Abstract of Judgment and other sentencing documents.<sup>161</sup> The CDCR staff enters the sentencing information, including pre-sentence into a computer system. Where there are multiple charges or cases, the CDCR staff will determine which of the terms is the longest or the “controlling” term and use that term when calculating the maximum and earliest possible release dates. The CDCR staff will also rely on the sentencing information to determine how many post-sentence/pre-CDCR credits the person has earned and their eligibility to earn good conduct credits during the prison term.<sup>162</sup>

Sometimes CDCR case records staff discover errors or discrepancies in the Abstract of Judgment. When this happens, the CDCR’s Legal Processing Unit (LPU) will send a letter to the sentencing court suggesting that a correction be made.<sup>163</sup> The sentencing court is not required to take any action in response to a CDCR letter pointing out a sentencing error. If the trial court does not take any action, the CDCR generally will send a follow-up letter. If the court still does not act, the CDCR may refer the matter to the district attorney, who may or may not file a formal motion for correction of the sentence. The court may not change the sentence without giving notice and an opportunity for a hearing.<sup>164</sup> If the court intends to increase the sentence, the court must allow the person to attend the hearing.<sup>165</sup>

The CDCR has no legal authority to change the sentence recorded on the Abstract of Judgment unless a court orders a change in the sentence.

The person should receive a copy of any letter the CDCR sends to the court or district attorney. They should review the letter and try to determine whether the court actually made an error and whether correction of any error would increase or reduce their prison term. The person should also send the letter to their trial court attorney and appellate attorney and ask for advice. If it appears that the CDCR is correct, and if correction of the error would increase the term, the person probably should not take any other action. On the other hand, if correction of an error would reduce the sentence, the person should ask the trial or appellate attorney to contact the sentencing court; if the court does not act to correct the error, the person should consider filing a habeas corpus petition. (See § 8.41 and Chapter 15.)

A court that does act on a habeas petition or a CDCR request for a sentence correction has authority to correct any sentence that is “unauthorized”; an unauthorized sentence is one that the penal statutes clearly do not allow. The court should re-sentence the person to a lawful sentence, and the person may end up with an total term that is longer, shorter or the same as the original term.<sup>166</sup> If the court can impose a lawful total sentence that is the same or shorter than the original, then the

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<sup>161</sup> DOM § 71010.1; DOM § 73020 et seq.

<sup>162</sup> DOM § 71010.8.1; DOM § 72030 et seq.

<sup>163</sup> DOM § 71020.7 et seq.; DOM § 73010.4.

<sup>164</sup> *In re Williams* (2000) 83 Cal.App.4th 936, 942-943 [100 Cal.Rptr.2d 144].

<sup>165</sup> *People v. Mora* (2002) 99 Cal.App.4th 397, 398-399 [121 Cal.Rptr.2d 258].

<sup>166</sup> *In re Ricky H.* (1981) 30 Cal.3d 176, 191 [178 Cal.Rptr. 324, 333]; *People v. Serrato* (1973) 9 Cal.3d 753, 764 [109 Cal.Rptr. 65].

court cannot sentence the person to a greater total term than was originally imposed.<sup>167</sup> Also, the court may not change a sentence in a manner that would violate the person's plea bargain.<sup>168</sup>

If the court does change the sentence, it will issue an amended Abstract and send a copy to the CDCR and to the person.

If a person believes that the re-sentencing was not conducted properly or that the new sentence is unlawful or violates a plea bargain, then the person may appeal the court's action. The procedures are similar to those for a direct appeal from a criminal judgment (see Chapter 14).<sup>169</sup>

## 8.26 Credits for Post-Sentence/Pre-CDCR Custody

Most people spend at least a few days in the county jail after being sentenced before they are transferred to a CDCR reception center. It is the CDCR's duty to calculate and apply credits for this period of time.<sup>170</sup> The actual days in custody for such periods are referred to on the Legal Status Sheet (LSS) as "Post-Sentence" credits. The CDCR should apply conduct credits for post-sentencing/pre-prison time at the same rate as was awarded for pre-sentence custody time.<sup>171</sup> These post-sentence/pre-prison conduct credits are identified on the LSS as "vested credits."

## PRISON CREDITS FOR GOOD BEHAVIOR AND PROGRAMMING

### 8.27 Overview of CDCR Credits for Good Behavior and Programming

Many people serving determinate (set-length) terms can earn sentence-reducing credits for good conduct and work in prison.<sup>172</sup> (The prison conduct credits that apply to indeterminate terms of life with the possibility of parole, including sentences under the "Three Strikes" law, are discussed in § 9.8. The credits that apply to people serving parole or PRCS revocation terms are discussed in § 11.27.) The laws regarding prison conduct credits have changed many times over the years, and the amount of credits that a person is eligible to earn is determined by the dates that the person is in custody and the type of criminal sentence. Even if a person is eligible to earn conduct credits, the actual credits they earn will depend on good behavior and programming in prison (see §§ 8.28-8.40).

In some situations, a person may be serving time on multiple cases that have different credit-earning eligibility. For example, a person could have a non-violent second-strike sentence in one case but also have a concurrent or consecutive sentence from a different case for a non-violent offense where no strike was charged or where any strike was dismissed. Thus, under current law, the person is limited to one-for-two conduct credits on the two strikes sentence but can earn one-for-one or two-for-one conduct credits on the other sentence. The credits and release dates for the two cases

<sup>167</sup> *People v. Torres* (2008) 163 Cal.App.4th 1420, 1432-1433 [78 Cal.Rptr.3d 444]; compare *People v. Reyes* (1989) 212 Cal.App.3d 852, 857 [260 Cal.Rptr. 846] (court can impose higher term on re-sentencing where mandated by law).

<sup>168</sup> *People v. Blount* (2009) 175 Cal.App.4th 992, 996-998 [96 Cal.Rptr.3d 684].

<sup>169</sup> Penal Code § 1237(b).

<sup>170</sup> Penal Code § 2900.5(e).

<sup>171</sup> Penal Code § 4019(a).

<sup>172</sup> 15 CCR §§ 3043-3044. There are also laws that allow people in jail serving felony terms to earn good conduct and programming credits. Penal Code §§ 4019(a)(6)-4019.4.



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would have to be calculated separately, starting with the longer term first and then using the EPRD for the longer term as the start date for calculating the EPRD for the shorter term.

In addition to good conduct credits, the CDCR grants some additional credits to people who meet programming “milestones,” participate in self-study or volunteer activities, or get GEDs, high school, or college degrees (§§ 8.34-8.36).

Credit will not be awarded or restored if it will advance a release date to less than 60 calendar days from the award or restoration of credit.<sup>173</sup>

Credits for good behavior and programming can be taken away if a person commits a serious disciplinary violation. (§ 8.38). In some situations, the lost credits can be restored if the person then has good behavior for a period of time (§§ 8.39-8.40).

### 8.28 Current Good Conduct Credit Earning Laws

In February 2014, a federal court ordered the state of California to take steps to reduce prison over-crowding, including awarding additional credits to some people in prison.<sup>174</sup> In November 2016, the voters passed Proposition 57, which required the CDCR to draft and adopt regulations granting credits for good behavior and rehabilitative programming<sup>175</sup> The CDCR then enacted new rules that grant more Good Conduct Credit to many people for time they served on and after May 1, 2017.<sup>176</sup> Note that many of the statutes that used to govern credit-earning still appear in the Penal Code; this can lead to confusion since the court order and CDCR rules conflict with those statutes. However, the court order and CDCR rules control in-prison credit earning. There are four levels of credit-earning eligibility for people with determinate-sentences (see § 9.8 for credit eligibility for people with indeterminate life sentences):

- ◆ one day credit for every four days served (20%):
- ◆ people serving a term for a conviction of a violent felony, effective May 1, 2017, unless the person has completed training for or is assigned to a fire camp or as a firefighter.<sup>177</sup>
- ◆ one day credit for every two days served (33.3%):
- ◆ people sentenced under the Two Strikes Law (second-striker) for non-violent offenses, effective May 1, 2017,<sup>178</sup> or

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<sup>173</sup> 15 CCR§ 3043(c).

<sup>174</sup> *Plata v. Brown* (N. D. Cal. Feb. 10, 2014) No. C01-1351/*Coleman v. Brown* (E.D. Cal. Feb. 10, 2014 ) No. S90-520, Order.

<sup>175</sup> California Constitution, Article I, § 32.

<sup>176</sup> 15 CCR §§ 3043-3043.6.

<sup>177</sup> 15 CCR § 3043.2(a)(2).

<sup>178</sup> See 15 CCR § 3043.2(a)(3).

- ◆ people sentenced under the Two Strikes Law (second-striker) for non-violent offenses, except for any person required to register due to sex-related offenses, effective from February 10, 2014 through April 30, 2017.<sup>179</sup>
- ◆ one day credit for every one day served (50%):
- ◆ people serving a determinate sentence who do not fall into any other category, effective May 1, 2017, or
- ◆ people serving a determinate sentence for a violent felony who have completed training for or are assigned to a fire camp or as a firefighter, effective May 1, 2017.<sup>180</sup>
- ◆ two days credit for every one day served (66.6%):

a person serving a sentence for non-violent offenses and otherwise eligible for 50% credit, who is in Minimum A and Minimum B custody, effective January 1, 2015. These credits also apply to people who meet all of the criteria for minimum custody, but are ineligible for minimum custody placement due to medical or mental health care needs,<sup>181</sup> or

- ◆ people serving a determinate sentence for a non-violent felony who have completed training for or assigned to a fire camp or as a firefighter, effective July 1, 2009.<sup>182</sup>

## 8.29 Prior Good Conduct Credit Earning Laws

Prior to January 25, 2010, the credit laws distinguished between people who were working or attending vocational programs and those who were not.<sup>183</sup> Unless some special statutory limit was applied, the CDCR awarded one day of worktime credit for each day a person participated in a full-

<sup>179</sup> *Plata v. Brown* (N. D. Cal. Feb. 10, 2014) No. C01-1351/*Coleman v. Brown* (E.D. Cal. Feb. 10, 2014) No. 90-520, Order.

<sup>180</sup> 15 CCR § 3043.2(a)(4). Note that the CDCR's titles for the various credit categories are NOT internally consistent. "15%," "20 percent" and "33.3%" mean that a person gets credit for those percentages of time actually served. BUT CDCR's "50%" credit does NOT mean a person gets credit for 50% of days actually served. Rather, a person gets credit for 100% of days served (day-for-day) and the person ends up serving 50% of the actual time imposed (sometimes called doing "half-time").

<sup>181</sup> 15 CCR § 3043.2(a)(5); CDCR, *Memorandum: Minimum A Custody and Minimum B Custody Criteria and Application*, dated June 5, 2015. CDCR's "66.6%" credit does NOT mean a person gets credit for 66.6% of days actually served. Rather, a person gets credit for 200% of days served (two-for-one) and the person ends up serving about 33.3% of the actual time imposed.

<sup>182</sup> 15 CCR § 3043.2(a)(5); Penal Code § 2933.3(b). Until May 1, 2017, the two-for-one-credit policies did not override any statutory credit-eligibility limits on credit-earning (see § 8.29).

<sup>183</sup> Former Penal Code § 2933. This law became effective on January 1, 1983. People whose crimes were committed before January 1, 1983 could waive their rights under the previous "good time" law and become eligible to earn half-time work credits. Penal Code § 2934. From 1977 through 1982, the law provided only for good-time credits of one day for every two days served. Former Penal Code § 2931. Credits earned under the pre-1983 law are listed as "vested credits" on the LSS and cannot be lost due to disciplinary offenses occurring after the person's waiver. Any person who is still earning credits under the pre-1983 law is identified on the LSS by Credit Code 2. After the worktime credit law passed, courts held that the CDCR did not have to award additional credit for work done before January 1, 1983. *In re Bender* (1983) 149 Cal.App.3d 380, 387-390 [196 Cal.Rptr. 801]; *In re Strick* (1983) 148 Cal.App.3d 906, 913 [196 Cal.Rptr. 293].

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time work, vocational or education program (“one-for-one” or “half-time” credits).<sup>184</sup> The CDCR granted only one day of conduct credit for every two days served (“one-for-two” or “third-time” credits) to people who were awaiting assignment to a work, vocational or education program, programming in a part-time assignment, or enrolled in a college program.<sup>185</sup> This policy was upheld by the courts on the principle that half-time work credits were a “privilege, not a right.”<sup>186</sup> However, courts did sometimes intervene to ensure that the CDCR followed its own credit rules and did not operate the work credit program in an arbitrary manner.<sup>187</sup>

Effective January 25, 2010, the state eliminated the distinction between work and conduct credits. From January 25, 2010 through April 30, 2017, unless a statutory exception applied, people who were disciplinary-free were granted one day of conduct credit for every day served (“half-time”), regardless of whether they were programming full-time or part-time, on waiting lists for assignments, or undergoing reception center processing.<sup>188</sup>

Starting in the 1990s, the Legislature began carving out exceptions to the in-prison credit eligibility laws *that were in effect up until May 1, 2017*. Most of these exceptions created special limits on the amount of credits certain people can earn. A few of these amendments increased credit eligibility. The people who were subject to special prison credit rules were as follows (if a person fell into more than one category, the most restrictive rule applied):

- ◆ Effective January 1, 2003, a person assigned to a CDCR conservation camp earned two days of worktime credit for each day served.<sup>189</sup>
- ◆ A person sentenced to a doubled term under the “Two Strikes” law earned conduct credit of no more than 20 percent of days actually served.<sup>190</sup>

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<sup>184</sup> Former Penal Code § 2933(a)-(b). Courts rejected challenges by people held in jail who claimed that it was unfair to deny them similar half-time credits for work or programming. *People v. Heard* (1993) 18 Cal.App.4th 1025, 103-1031 [22 Cal.Rptr. 684]; *People v. Caruso* (1984) 161 Cal.App.3d 13, 20 [207 Cal.Rptr. 221]; *In re Cleaver* (1984) 158 Cal.App.3d 770, 775 [204 Cal.Rptr. 835].

<sup>185</sup> Former Penal Code § 2933(a).

<sup>186</sup> Former Penal Code § 2933(b); *Brodheim v. Rowland* (9th Cir. 1993) 993 F.2d 716, 717; *Kalka v. Vasquez* (9th Cir. 1989) 867 F.2d 546, 547; *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1095; *In re Vargas* (1985) 172 Cal.App.3d 316, 321 [218 Cal.Rptr. 225]. One exception was when people were unfairly denied programming opportunities based on disability. *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, § III (agreement to grant people with disabilities full credits if they were held at a reception center for more than 60 days due solely to a disability).

<sup>187</sup> *In re Randolph* (1989) 215 Cal.App.3d 790 [263 Cal.Rptr. 768]; *In re Carter* (1988) 199 Cal.App.3d 271 [244 Cal.Rptr. 648]; *In re Monigold* (1988) 205 Cal.App.3d 1224 [253 Cal.Rptr. 120]; *People v. Barnes* (1985) 176 Cal.App.3d 235 [221 Cal.Rptr. 415]; *In re Reina* (1985) 171 Cal.App.3d 638 [217 Cal.Rptr. 535].

<sup>188</sup> Penal Code § 2933. The CDCR calculated conduct credits earned by people from January 25, 2010 onward in accordance with the new laws. The CDCR did not grant additional credit for any time served prior to January 25, 2010. CDCR, *Instructional Memo re: Changes in Penal Code Sections 2933 and 4019* (Feb. 4, 2010); see *People v. Brown* (2012) 54 Cal.4th 314, 322 [142 Cal.Rptr.3d 824].

<sup>189</sup> Former Penal Code § 2933.3.

<sup>190</sup> Penal Code § 667(c)(5); Penal Code § 1170.12(a)(5); 15 CCR § 3371(h).

- ◆ A person convicted of a “violent felony” committed on or after September 21, 1994, could accrue no more than 15 percent credit.<sup>191</sup> The 15 percent limit applied even when punishment on the violent felony was stayed pursuant to Penal Code § 654<sup>192</sup> or when a court struck or stayed punishment on an enhancement that rendered an offense a violent felony.<sup>193</sup> This provision did not limit eligibility to earn prison conduct credits toward a concurrent sentence for a non-violent offense. However, where sentences for non-violent and violent felonies were run consecutively, the 15 percent limit applies to the whole “aggregate” term.<sup>194</sup> There was an exception to this rule when a person is sentenced for a violent offense and then later received a consecutive sentence for a non-violent in-prison offense; the sentence for the in-prison offense is deemed to be totally separate from the original sentence and the 15 percent credit limit does not apply to it.<sup>195</sup>
- ◆ A person, who was convicted of certain felony offenses committed on or after January 1, 1991, with two or more prior convictions and prison terms for those offenses, was not eligible to earn any conduct credit.<sup>196</sup>
- ◆ The law that prohibited a person with a life sentence who was convicted of murder from earning any conduct credits also prohibited credit-earning on any accompanying determinate term, regardless of whether the terms were consecutively or concurrent.<sup>197</sup>

### 8.30 Work Group Designations

Even when a person is eligible to earn Good Conduct Credits, the CDCR may not grant full credits if a person refuses to work or is placed in segregated housing for misbehavior or gang-related activity. (Laws and policies governing how people are assigned to job and education programs are discussed in Chapter 4. Segregation placement is discussed in Chapter 6.) The CDCR classification committees use a work group designation to identify these factors. Note that only assignment to Work

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<sup>191</sup> Penal Code § 2933.1(a), (c). The list of “violent felonies” is in Penal Code § 667.5. Penal Code § 2933.1 applies to any person convicted of a crime that was added to the list of violent felonies after Penal Code § 2933.1 was enacted but before the person’s crime was committed. *People v. Van Buren* (2001) 93 Cal.App.4th 875, 877-878 [113 Cal.Rptr.2d 510]. Because the list has been modified from time to time, a person should check the version of Penal Code § 667.5 in effect at the time of the offense.

<sup>192</sup> *In re Pope* (2010) 50 Cal.4th 777, 781 [114 Cal.Rptr.3d 225].

<sup>193</sup> *In re Borlik* (2011) 194 Cal.App.4th 30, 36 [124 Cal.Rptr.3d 410]; *In re Pacheco* (2007) 155 Cal.App.4th 1439, 1443 [66 Cal.Rptr.3d 799].

<sup>194</sup> *In re Reeves* (2005) 35 Cal.4th 765, 775 [28 Cal.Rptr.3d 4]. The issue of whether a crime is a “violent felony” for purposes of limiting pre-sentence credits may be decided by the judge and need not be submitted to a jury. *People v. Garcia* (2004) 121 Cal.App.4th 271, 274 [16 Cal.Rptr.3d 833].

<sup>195</sup> *In re Tate* (2006) 135 Cal.App.4th 756, 760-764 [37 Cal.Rptr.3d 710].

<sup>196</sup> Penal Code § 2933.5. Note that the many of these offenses are serious or violent, so most people who fall into this category are likely to receive indeterminate life terms.

<sup>197</sup> Penal Code § 2933.2; *In re Maes* (2010) 185 Cal.App.4th 1094 [110 Cal.Rptr.3d 900]. In all other situations, a person with a life sentence is eligible to earn good conduct credits toward the determinate term under the credit laws that normally apply to such a sentence. *In re Monigold* (1983) 139 Cal.App.3d 485 [188 Cal.Rptr. 698].

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Groups C or D-2 actually decrease the amount of credits a person earns and that assignment to Work Group F or M increases credits to two-for-one.<sup>198</sup>

- ◆ Work Group A-1: Full-Time Assignment; People willing and able to perform “full-time” programming assignments, including rehabilitative programs, college combined with a half-time work or vocational program.<sup>199</sup> People with “complete” disabilities who are not capable of performing in any assignment should be placed in Work Group A-1. People with “partial disabilities” shall be placed in Work Group A-1 and given an assignment within their physical and mental capability.<sup>200</sup>
- ◆ Work Group A-2: Involuntarily Unassigned; People who are willing to work but are not provided with an assignment because they are on a waiting list for an assignment or unassigned while awaiting an adverse transfer.<sup>201</sup> Also, people who are in a Restricted Custody General Population Unit (RCGP) due to rule violations or failure to program in the SDP are in Work Group A-2 (unless they were previously deemed a program failure and placed in Work Group C).<sup>202</sup>
- ◆ Work Group B: Half Time Assignment; People who have half-time assignments or who are full time college students without another assignment.<sup>203</sup>
- ◆ Work Group C: Disciplinary Unassigned; Zero Credit; People who refuse to work in a program assignment, who twice refuse assigned housing, or who are removed from assignments for repeated rule violations. The person may remain in Group C for a period not to exceed the number of days of credit forfeiture for the disciplinary violation.<sup>204</sup>
- ◆ Work Group D-1: Lockup Status; people who are placed in any type of segregated housing (such as a Security Housing Unit (SHU), Administrative Segregation Unit (ASU) or Psychiatric Services Unit (PSU)), unless they meet the criteria for Work Group D-2. D-1 status applies to people in Non-Disciplinary Segregation (NDS) placement.<sup>205</sup> People who are in the Step Down Program (SDP) are in Work Group D-1.<sup>206</sup>

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<sup>198</sup> 15 CCR § 3044(b).

<sup>199</sup> 15 CCR § 3044(b)(1). Work Group A-1 includes people in some “special assignments” like Inmate Advisory Council, pre-release programs, or reentry hub programs. 15 CCR § 3043.7(a).

<sup>200</sup> 15 CCR § 3044(b)(1)(D)-(E).

<sup>201</sup> 15 CCR § 3044(b)(2).

<sup>202</sup> 15 CCR § 3378.9(e)-(f).

<sup>203</sup> 15 CCR § 3044(b)(3).

<sup>204</sup> 15 CCR § 3044(b)(4); see also Penal Code § 2933(a). A person can be deemed a “program failure” and referred for placement in Work Group C after receiving more than two serious disciplinary violations or one serious and two administrative disciplinary violations in the past 180 days. 15 CCR § 3000; 15 CCR § 3314(i).

<sup>205</sup> 15 CCR § 3044(b)(5).

<sup>206</sup> Penal Code § 2933.6; 15 CCR § 3043.2; 15 CCR § 3044(b)(5); 15 CCR § 3378(a). The laws have changed over the years; that people who were in a SHU in the past due to gang validations may have been subject to different rules.

- ◆ Work Group D-2: Lock-up Status; Zero Credit; Some people who are placed in SHU, ASU, or PSU placements receive no conduct credits:
  - people who are found guilty of a serious disciplinary offense and assessed a credit loss and a SHU term. The D-2 status is limited to the lesser of the period of credit forfeiture or 180 days, except that D-2 status shall last 360 days if the person committed an A-1 disciplinary offense that resulted in great bodily injury to someone who is not incarcerated, such as prison staff or volunteers. In unusual cases, D-2 status period can be extended in six-month intervals beyond the normal period if a classification committee determines that program assignment would present a substantial risk of serious harm.
  - people serving indeterminate or determinate SHU terms who are deemed to be program failures.<sup>207</sup>
- ◆ Work Group F: Minimum Custody and Firefighting; Two-for-One Credits; People who are statutorily eligible for day-for-day credits and assigned to Minimum A or Minimum B Custody and any person who has completed training to be assigned to a fire camp or as a firefighter.<sup>208</sup> People with medical and mental health issues are not necessarily excluded from these placements or eligibility to earn two-for-one-credits; eligibility is considered on a case-by-case basis. Also, people who are excluded from Minimum Custody solely due to the need for medical or mental health care should be granted two-for-one credits.<sup>209</sup>
- ◆ Work Group M (as of May 1, 2017): Minimum Custody or otherwise eligible for Minimum Custody; Two-for-One Credits; People who are in Minimum A or Minimum B Custody who do not qualify for Work Group F. People who would be eligible for Minimum A or Minimum B Custody wxcwpt that their medical or mental health care needs require other housing. People with out of state warrants but no detainers, and the other state says they will not extradite to prosecute. Also people delayed in a reception center beyond 60 days due to disability or dialysis, starting on the 61st day.<sup>210</sup>
- ◆ Work Group U: Unclassified; People who are in a CDCR reception center or who are awaiting classification at their assigned institution.<sup>211</sup>

<sup>207</sup> Penal Code § 2932(a)(4); 15 CCR § 3044(b)(6). From January 25, 2010 until October 8, 2017, people who were housed in SHUs as validated prison gang members were also on D-2 status; prior to January 25, 2010, they had been eligible to earn some good conduct credits. Courts rejected arguments that taking away credit-earning eligibility from people who previously could earn credits violated the U.S. Constitution's prohibition on ex post facto laws. *Kernan v. Hinojosa* (2016) 578 U.S. \_\_\_ [136 S.Ct. 1603; 194 L.Ed.2d 701]; *Nevarez v. Barnes* (9th Cir. 2014) 749 F.3d 1124, 1128-1129; *In re Efstathiou* (2011) 200 Cal.App.4th 725, 730-733 [133 Cal.Rptr.3d 34]; *In re Sampson* (2011) 197 Cal.App.4th 1234, 1243-1244 [130 Cal.Rptr.3d 39].

<sup>208</sup> Penal Code § 2933.3; 15 CCR § 3044(b)(7).

<sup>209</sup> CDCR, Memorandum: Minimum A Custody and Minimum B Custody Criteria and Application (June 5, 2015).

<sup>210</sup> 15 CCR 3044(b)(9).

<sup>211</sup> 15 CCR § 3044(b)(8).

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### 8.31 “S” Time for Absence from Assignments

People who are temporarily unable to participate in their program assignments due to circumstances beyond their control will often stay in their existing work group. Credit granted for such periods is called “S” time.<sup>212</sup> (Issues related to illness, disability or transfer are discussed in §§ 8.32-8.33.)

The CDCR regulations list 22 circumstances in which “S” time shall be authorized. Examples include lockdowns or modified programs, attorney visits, being out-to-court, appearances at classification hearings that could not be held during off-duty hours, and administrative segregation for which the person is held not responsible.<sup>213</sup>

Courts have on occasion stepped in to require the CDCR to grant “S” time in circumstances not listed in the regulations, where the denial of “S” time was arbitrary.<sup>214</sup>

### 8.32 Work Groups for People Who Have Disabilities or are Injured or Ill

The CDCR has regulations regarding work group assignments for people who cannot perform in a program assignment either temporarily or long-term because of medical issues or disabilities. There are different rules depending on the seriousness and length of the medical condition.

A person who is unable to work due to an on-the-job injury retains the existing work group status until medically-approved to return to programming. The exception is that a person in Work Group F will get re-assigned to Work Group A-1 if medical staff determine the person can no longer fulfill conservation camp duties.<sup>215</sup>

A person who has a life-threatening or emergency condition that requires immediate medical care, or who misses work for a medical appointment with an outside medical provider will receive “S” time and there will be no change in work group for a short period of absence.<sup>216</sup>

“Medical lay-ins” (when a person misses work due to a non-emergency illness) or medically unassigned periods of 29 calendar days or less that do not require in-patient hospital care do not affect the person’s work group, but are to be covered through use of accrued Earned Time Off (ETO). A person must notify their program supervisor of the absence and must go to sick call and have all sick time approved by the medical staff.<sup>217</sup>

A person who cannot participate in an assignment because of a medical or psychiatric condition that requires inpatient hospital care for 29 calendar days or less is retained in their normal

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<sup>212</sup> 15 CCR § 3045.3(a).

<sup>213</sup> 15 CCR § 3045.3(b).

<sup>214</sup> *In re Carter* (1988) 199 Cal.App.3d 271, 276-277 [244 Cal.Rptr. 648] (person assigned to job but not able to start working due to circumstances beyond their control); *In re Randolph* (1989) 215 Cal.App.3d 790, 795 [263 Cal.Rptr. 768] (requiring retroactive application of new rule granting “S” time for out-to-court).

<sup>215</sup> 15 CCR § 3043.7(f).

<sup>216</sup> 15 CCR § 3045.3(b)(12).

<sup>217</sup> 15 CCR § 3043.7(e)(2); 15 CCR § 3045.2(b)-(c).

work group. On the 30th day, a person housed in general population will be placed in Work Group A-2, and a person housed in a segregation unit in Work Group A-1 or B will be placed in Work Group D-1; a person housed in a segregation unit in Work Group D-1 or D-2 will stay in the same status.<sup>218</sup>

If a medical condition is expected to prevent the person from programming for 30 days or longer, the work group designation will be reviewed by a classification committee. A physician must state when the person is expected to be able to return to work. A person who is “medically unassigned” for 30 days or longer will have their work group status changed as follows: a person housed in general population unit will be placed in Work Group A-2 on the 30th day of unassignment and a person housed in segregation unit who is in A-1 or B will be changed to D-1; there will be no change in work group for a person in segregation on D-1 or D-2 status.<sup>219</sup>

Work group status for people housed in general population and who are diagnosed by a physician or psychiatrist as medically disabled and incapable of participating in any programming assignment will depend on how long the disability is expected to last. If the disability is expected to last less than six months, the person will be placed in Work Group A-2; if the disability then unexpectedly lasts more than six months, credit earning status will be changed to A-1 effective the first days of the temporary medical/psychiatric unassignment. People who are expected to have a disability for six months or more are classified as group A-1 for as long as they have that disability.<sup>220</sup>

A classification committee can also act upon the recommendation of medical staff to clear a person for “light duty,” meaning either a full-time program with restrictions on the activities that may be performed or assignment to a part-time program. The person can earn full credit for participation in the light duty assignment.<sup>221</sup>

People transferred to the Department of State Hospitals (DSH) for inpatient mental health care are classified as A-1.<sup>222</sup>

### 8.33 Impact of Transfers on Work Group Designations

A transfer that removes a person from a program assignment may change the work group, depending on whether or not the transfer is due to misbehavior. A non-adverse transfer is a move to an institution or facility where the security level is the same or lower, or a transfer from a reception center to a mainline institution. If the transfer is non-adverse, the work group does not change when the person moves.<sup>223</sup> For example, a person with a Level IV classification in Work Group A-1 who is transferred to a Level III institution or to another Level IV institution for non-disciplinary reasons will stay in Work Group A-1 at the new facility.

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<sup>218</sup> 15 CCR § 3043.7(b).

<sup>219</sup> 15 CCR § 3043.7(c).

<sup>220</sup> 15 CCR § 3044(d); *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, §§ II.B, IV.I.14(f), IV.I.19(b).

<sup>221</sup> 15 CCR § 3043.7(e)(1).

<sup>222</sup> 15 CCR § 3043.8(b).

<sup>223</sup> 15 CCR § 3043.8(a); see also *In re Reina* (1985) 171 Cal.App.3d 638, 644 [217 Cal.Rptr. 535].



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An adverse transfer is a transfer resulting from misbehavior or disciplinary violations, such as an involuntary transfer to a higher custody level institution or facility or involuntary removal from a program.<sup>224</sup> A person in Work Group F or A-1 who receives an adverse transfer will be reclassified to Work Group A-2 as of the date of the transfer and remain in that group until reclassified by the receiving institution.<sup>225</sup> People in work groups other than A-1 who receive adverse transfers remain in their same work group.<sup>226</sup>

### 8.34 Milestone Completion Credit

Effective August 1, 2017, all people in CDCR prisons who are serving determinate sentences or sentences of life with the possibility of parole are eligible to earn Milestone Completion Credit for successful participation in approved rehabilitative programs, including academic, vocational, therapeutic, life skills, and substance abuse programs. A person can earn Milestone Credits of up to 12 weeks in a 12-month period; excess credits will be rolled over to the following year. People housed in facilities outside CDCR jurisdiction (in county jails, other states' prisons, or federal prison) cannot Earn Milestone Completion Credits.<sup>227</sup>

From January 25, 2010 through July 31, 2017, people could receive up to 6 weeks of Milestone Completion Credit. During this period, Milestone Completion Credits could not be earned by any person who was: (1) required to register as a person with sex-related offenses under Penal Code § 290 et seq., (2) serving time on a parole violation without a new term, (3) serving a term for a violent felony as defined in Penal Code § 667.5(c), or (4) serving a term under the Two or Three Strikes laws described in Penal Code §§ 667(b)-(i) and 1170.12.<sup>228</sup> Then, due to prison overcrowding, the CDCR started awarding milestone credits to people with non-violent second strikes (except for those required to register as a person with sex-related offenses) as of February 10, 2014.<sup>229</sup>

### 8.35 Rehabilitative Achievement Credits

Effective August 1, 2017, all people in CDCR prisons serving determinate sentences or sentences of life with the possibility of parole can earn Rehabilitative Achievement Credits. These credits are for participation in self-help and volunteer public service activities. People can earn one week of credit for every 52 hours of participation, with a maximum of four weeks of credit per year, for participating in eligible programs. People housed in facilities outside CDCR jurisdiction (in county jails, other states' prisons, or federal prison) cannot Earn Rehabilitative Achievement Credits.<sup>230</sup>

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<sup>224</sup> 15 CCR § 3043.8(c)(1); see also 15 CCR § 3375(f)(1).

<sup>225</sup> 15 CCR § 3043.8(c)(3).

<sup>226</sup> 15 CCR § 3043.8(c)(4).

<sup>227</sup> 15 CCR § 3043.3.

<sup>228</sup> Penal Code § 2933.05; Former 15 CCR § 3043(c). No milestone credit is granted for programs completed prior to January 25, 2010.

<sup>229</sup> *Coleman v. Schwarzenegger* (E.D. Cal. Feb. 10, 2014) No. S90-0520/*Plata v. Schwarzenegger* (N.D. Cal. Feb 10, 2014) No. C01-1351, Order.

<sup>230</sup> 15 CCR § 3043.4.

### 8.36 Education Merit Credits

Effective August 1, 2017, all people in CDCR prisons who are serving determinate sentences or sentences of life with the possibility of parole can earn Education Merit Credits. These credits recognize the achievements of people who earn high school diplomas, GEDs, or higher education degrees, or complete the offender mentor certification program available at several CDCR prisons. People must earn at least 50 percent or more of the degree or diploma during their current term to receive Education Merit Credits. People who earn GEDs or high school diplomas get 90 days of credit and those who earn other degrees or an offender mentor certification get 180 days credit. These credits took effect in August 2017, but are to be applied retroactively to grant credit for education activities prior to that date. Education Merit Credit also applies to people serving California sentences who are housed out-of-state, in federal prison, or in state hospitals.<sup>231</sup>

### 8.37 Extraordinary Conduct Credits

A person may be granted up to 12 months of Extraordinary Conduct Credit conduct credit for a “heroic act” or “exceptional assistance in maintaining the safety and security of a prison.” Such acts are defined as: (1) preventing the loss of life or injury to the public, staff or other people in prison, (2) preventing significant loss or destruction of property, or (3) providing sworn testimony in judicial proceedings involving prosecution of a felony offense which occurred in prison.<sup>232</sup> A person whose credit-earning eligibility is limited under the “second strike” law can be awarded credit for heroic acts;<sup>233</sup> presumably this could apply to other people whose conduct credit-earning eligibility is limited.

### 8.38 Forfeiture of Credits for Serious Rule Violations

Good Conduct Credit, Milestone Completion Credit, and Rehabilitative Achievement Credit can be forfeited if a person is found guilty of a serious rule violation. (Chapter 5 examines the disciplinary process in detail.) Up to 360 days of credit may be lost for the most serious offenses, up to 180 days may be lost for other acts that could be prosecuted as felonies, up to 90 days of credit can be lost for acts that could be prosecuted as misdemeanors, and up to 30 days may be lost for other acts of misconduct.<sup>234</sup>

The CDCR regulations have detailed rules about the amount of credit that can be forfeited for various types of disciplinary offenses.<sup>235</sup> (The disciplinary credit loss provisions are further discussed in § 5.10.)

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<sup>231</sup> 15 CCR § 3043.5.

<sup>232</sup> Penal Code § 2935; 15 CCR § 3043.6.

<sup>233</sup> *In re Young* (2004) 32 Cal.4th 900, 909 [12 Cal.Rptr.3d 48].

<sup>234</sup> Penal Code § 2932(a); 15 CCR § 3043.2(e) (Good Conduct Credit can be forfeited) 15 CCR § 3043.3(g) (Milestone Completion Credits can be forfeited) 15 CCR § 3043.4(e) (Rehabilitative Achievement Credit can be forfeited); see also 15 CCR § 3043.5(f) (Educational Merit Credits cannot be forfeited); 15 CCR § 3043.6(d) (Extraordinary Conduct Credits cannot be forfeited). The amounts of credits that can be forfeited for various offenses have been increased over the years; the changes apply even to people who committed their crimes prior to the effective dates of increases. *In re Ramirez* (1985) 39 Cal.3d 931, 938 [218 Cal.Rptr.324].

<sup>235</sup> 15 CCR § 3323.

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People should be aware that when credits are forfeited, the CDCR does not simply add the number of days forfeited to the EPRD. Instead, the CDCR re-computes the number of net credits that have been earned by the person and the release date using the process described in § 8.2. Because of the way the calculation is done, a disciplinary credit loss will not increase the EPRD by the full number of days of credit lost. For example, if a person is earning one-for-one (50%) credit, the EPRD will increase by only half of the number of credits that were forfeited.

If a pending disciplinary charge could result in a loss of conduct credits that would extend the EPRD, it appears that the CDCR can keep the person in custody beyond the EPRD while the disciplinary process is being undertaken. If the person is then found not guilty of the charges, any extra time in prison will be credited toward the parole or PCRS period.<sup>236</sup>

### 8.39 Criteria for Restoration of Credits Forfeited for Serious Rule Violations

Conduct credit that has been forfeited due to a rule violation can sometimes be restored if the person then remains disciplinary free for some period of time.<sup>237</sup> The seriousness of the rule violation determines how much credit can be restored and how long a person must remain disciplinary free to qualify for restoration.<sup>238</sup>

All of the credit lost for a Division D, E or F disciplinary offense can be restored.<sup>239</sup> No credit can be restored for any disciplinary offense punishable by a credit loss of more than 90 days, which includes all A-1, A-2, B and C offenses. Also, no credit can be restored where the credit forfeiture loss is ordered by a court that has deemed the person to be a “vexatious litigant,” or a person who has abused court processes. In addition, no credit can be restored for some types of offenses: refusing to submit to drug or alcohol testing, testing positive for use of alcohol or a controlled substance, fermenting or distilling alcohol, and possessing dangerous contraband.<sup>240</sup>

For a person to be eligible for credit restoration, the period of disciplinary-free time must immediately follow the date the rule violation is committed or first discovered.<sup>241</sup> If the person commits a new rule violation before serving the full disciplinary-free period, the lost credits can never be restored.<sup>242</sup> The required disciplinary-free period is 180 days for Division D and E offenses and 90

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<sup>236</sup> Penal Code § 2932(g).

<sup>237</sup> Penal Code § 2933(d). As with credit losses, restored credits are not simply subtracted from the EPRD. Instead, the EPRD must be re-calculated as described in § 8.2.

<sup>238</sup> 15 CCR §§ 3327-3328. A person must be disciplinary free for six months to apply for restoration of credit lost for Level D or E offenses, and must be disciplinary free for three months to get restoration on Level F offenses. 15 CCR § 3328.

<sup>239</sup> 15 CCR § 3328(b)-(c).

<sup>240</sup> 15 CCR § 3327(a)(1)-(2). This rule applies disciplinary offenses committed on or after January 1, 1996. *In re Lomax* (1998) 66 Cal.App.4th 639, 646-648 [78 Cal.Rptr.2d 220]; *In re Winner* (1997) 56 Cal.App.4th 1481 [66 Cal.Rptr.2d 333]; but see *Hunter v. Ayers* (9th Cir. 2003) 336 F.3d 1007; (finding rule applies only after April 1, 1996). Under prior versions of 15 CCR §§ 3327 and 3328, people could apply for restoration more credits in more situations. See also *In re Mikhail* (1999) 70 Cal.App.4th 333, 338 [82 Cal.Rptr. 580].

<sup>241</sup> 15 CCR § 3328(a).

<sup>242</sup> 15 CCR § 3327(a)(2); 15 CCR § 3328(a). This rule does not apply to disciplinary offenses committed prior to June 5, 1995. CDCR Admin. Bulletin 95/12.

days for Division F offenses.<sup>243</sup> A person who is scheduled for release within the next 180 days or 90 days (depending on the seriousness of the rule violation) can apply for restoration after serving only part of the disciplinary-free period.<sup>244</sup>

In some circumstances, credit restoration can be denied even if the person has remained disciplinary free for the required period. Restoration will be denied when granting the request will result in the person being overdue for release.<sup>245</sup> People convicted of violent felonies or certain sex-related offenses against minors cannot get credit restorations that would result in law enforcement agencies having less than 45 days notice prior to the person's release.<sup>246</sup> Also, restoration may be denied if the person has failed to participate in a program assignment.<sup>247</sup>

Finally, restoration can be denied if a classification committee finds that there are extraordinary circumstances.<sup>248</sup> Extraordinary circumstances may include factors like a pattern of numerous acts of misconduct and "significant factors which aggravate the seriousness of the rule violation."<sup>249</sup> If there are extraordinary circumstances, the committee can postpone restoration for one additional disciplinary-free period.<sup>250</sup>

#### 8.40 Procedure for Restoration of Credits Forfeited for Serious Rule Violations

A person can apply for credit restoration by filling out CDCR Form 958 (copy included as Appendix 4-B). The application should be submitted to the person's counselor as soon as the required disciplinary-free period has been served.<sup>251</sup> The person should keep a copy of the application. A classification committee must hold a hearing on the restoration request within 30 days. The person has the right to be present at the hearing.<sup>252</sup>

The person must be provided with a written decision granting or denying the restoration request.<sup>253</sup> If the request is granted, the person should be informed of the new EPRD, which is usually done through a revised LSS.<sup>254</sup>

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<sup>243</sup> 15 CCR § 3328(b)-(c).

<sup>244</sup> 15 CCR § 3328(b)(1), (c)(1).

<sup>245</sup> 15 CCR § 3327(c)(1).

<sup>246</sup> Penal Code § 3058.6; Penal Code § 3058.9.

<sup>247</sup> 15 CCR § 3327(c).

<sup>248</sup> 15 CCR § 3329.

<sup>249</sup> 15 CCR § 3329(a)-(b).

<sup>250</sup> 15 CCR § 3329(a).

<sup>251</sup> 15 CCR § 3327(b).

<sup>252</sup> 15 CCR § 3327(b).

<sup>253</sup> 15 CCR § 3327(b).

<sup>254</sup> Penal Code § 2932(e); 15 CCR § 3327(c)(3).

## CHALLENGES TO CREDIT EARNING OR ELIGIBILITY

### 8.41 Challenging Credit Errors Made by the Court

If a person believes there is an error in pre-sentence or in-prison credits, the first step is to determine whether the error was made by the sentencing court or by the CDCR in interpreting the sentencing documents. To find out what the sentencing court did, the person will need to refer to the Abstract of Judgment and possibly also to the reporter's transcript of the sentencing hearing.<sup>255</sup> To see how the CDCR is interpreting the sentencing court's rulings and the laws on prison conduct credits, people should refer to the Legal Status Summary (LSS) and other CDCR classification or credit-calculation documents. Most or all of these documents should be in the person's CDCR Central File. (See § 19.9 for more information on how a person in prison or their attorney can request to review the Central file.)

If the credits are not correctly stated on the Abstract of Judgment, the error must be corrected by the court. Sometimes a court miscalculates the number of actual days a person served in pre-sentence custody. Other times, the court makes mistakes in determining which actual days in custody are "attributable" to the current case or cases. In such situations, the person may need to get evidence of the dates that they were in custody on the relevant cases or revocation charges. Courts also can make math-related mistakes in calculating pre-sentence conduct credits or can misapply the statutes limiting credit-earning for certain types of offenses. Other times, the judge will award correct credits but the court clerk will make a mistake when recording the court's order on the Abstract of Judgment; in such a case, there will be a difference between what the court said in the reporter's transcript and what credits are listed on the Abstract. In other situations, there may be disputes about what credit laws apply and how those laws should be interpreted.

If the sentencing court made a legal or clerical mistake, the error can be corrected only by a court. People should not use the CDCR administrative appeal process to challenge an error made by a court, because the CDCR cannot change a court's sentencing orders and administrative appeals can only be used to challenge actions made by prison officials.

If the sentencing court made a mistake in the pre-sentence credits, the person should contact the attorney who represented them during the trial or plea bargain and sentencing. The attorney may be able to explain what the court did and why. A person who has filed a direct appeal also should make sure to tell the appellate attorney about the credit error.

There are a variety of methods for challenging a court's pre-sentence credit error, depending on the type of error and when it is discovered:

- ◆ If the error is discovered soon after sentencing, the sentencing court may recall the sentence and issue a new sentence with correct credits; a court retains power to re-sentence the person up to 120 days after sentencing.<sup>256</sup>

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<sup>255</sup> A person who wants to challenge the length or type of sentence or restitution, fines, or fees that were imposed should refer to the information on direct appeals of criminal convictions in Chapter 14 and state court petitions for habeas corpus in Chapter 15.

<sup>256</sup> Penal Code § 1170(d). See § 8.13.

- ◆ If the person has filed a timely notice of a direct appeal from their case, the error in pre-sentence credits may be raised as part of the direct appeal.<sup>257</sup> (Direct appeals are discussed in more detail in Chapter 14.)
- ◆ If the error is clear and non-controversial (such as when the court makes a simple math error or the court clerk makes an error writing down what the court said), the court may act to correct the sentence at any time.<sup>258</sup> A person may be able to convince the sentencing court to correct such an error simply by writing a letter or filing a motion describing the error and asking for correction.<sup>259</sup>
- ◆ If the time for filing for a recall of commitment or a direct appeal has passed, if the sentencing court refuses to respond to an informal request for correction, or if the sentence claim relies on information that was not previously presented to the court, a person may file a state court petition for writ of habeas corpus. There is no set time for filing a state habeas petition, but a person should proceed with filing a petition without delay once the error is discovered. (See Chapter 15 for information regarding state court habeas corpus.)

A court action to correct a sentence should not be deemed to be moot even if the person has already been released, since any additional credits awarded by the court can be applied to reduce the parole or PRCS period.<sup>260</sup>

## 8.42 Challenging Credit and Release Date Calculation Errors Made by the CDCR

As discussed in § 8.41, the first step in addressing a credit or release date problem is to determine whether the error was made by the sentencing court or by the CDCR. To see how the CDCR is interpreting the sentencing court's rulings and applying in-prison conduct credits, the person should refer to their Legal Status Summary (LSS) and to any other necessary other documents such as classification chronos, disciplinary reports, and credit restoration notices.

The CDCR case records staff is generally accurate, but sometimes they make legal or calculation errors. They can make mistakes when they record the terms that were imposed, how the terms relate to each other, and what credits apply to which term. The CDCR can also make mistakes

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<sup>257</sup> The Penal Code states that no direct appeal can be taken of a pre-sentence credit issue unless the person has first presented the claim to the trial court at. Penal Code § 1237.1. However, some courts have allowed credit issues to be raised for the first time on direct appeal where there are other issues also on appeal. See, e.g., *People v. Acosta* (1996) 48 Cal.App.4th 411, 421-422 [55 Cal.Rptr.2d 675].

<sup>258</sup> *People v. Jack* (1989) 213 Cal.App.3d 913, 915-916 [261 Cal.Rptr. 860]; *In re Massengale* (1970) 10 Cal.App.3d 689, 693 [89 Cal.Rptr. 237].

<sup>259</sup> *People v. Clavel* (2002) 103 Cal.App.4th 516, 518-519 [127 Cal.Rptr.2d 660]; *People v. Fares* (1993) 16 Cal.App.4th 954, 958 [20 Cal.Rptr.2d 314].

<sup>260</sup> See e.g., *People v. Goodson* (1990) 226 Cal.App.3d 277, 280 n. 2 [277 Cal.Rptr.60]; *In re Reina* (1985) 171 Cal.App.3d 638, 650 [217 Cal.Rptr. 535]; *In re Ballard* (1981) 115 Cal.App.3d 647, 650 [171 Cal.Rptr.459]. An award of additional credits applied to the parole period will not allow a person to avoid incarceration on a parole violation unless the maximum parole discharge date expires before the end of the revocation term. *In re Monterrosa* (1987) 193 Cal.App.3d 851, 854 [238 Cal.Rptr. 535].

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in determining whether a person is eligible for in-prison conduct credits or computing how many conduct credits they have earned, forfeited, or had restored.

A person who wishes to question or challenge the CDCR's interpretation of the sentence or application of credits generally must pursue a CDCR administrative appeal until the problem is resolved or the appeal has been denied at the highest level of review. A court generally will not consider a challenge to a CDCR policy or action unless the person has first completed the administrative appeal process (see § 1.2).<sup>261</sup>

Sentence or credit issues usually should be brought via a CDCR Form 602 (except in cases in which the dispute involves a medical or disability accommodation issue, see §§ 1.25-1.26.) The appeal should explain why the person thinks there is an error and ask that the release date be corrected. If the issue involves in-prison conduct credits, people should also ask to be provided with the credit print-outs for the periods in question. These computer-generated sheets show the details as the conduct and programming credits have been earned and rule violations for which credit has been lost and restored. Along with the LSS (see § 8.2), these documents can be very helpful in figuring out if there is a credit error and exactly what type of error was made.

The process for filing an administrative appeal and pursuing it to higher levels is generally the same for credit and release date issues as for other types of matters. However, there is one main difference; if a person pursues a release date computation administrative appeal to the second level of review, the CDCR must conduct a Computation Review Hearing.<sup>262</sup> This is sometimes called a *Haygood* hearing after a case holding that the federal constitutional guarantee of due process requires the CDCR to investigate claims related to release date and credit errors and hold an informal hearing when a person challenges the computation of their release date.<sup>263</sup> (See § 1.33 for more information about administrative appeals regarding release dates and credits.)

Sometimes the CDCR may respond to an administrative appeal with a statement that it is following the order of the sentencing court on the matter. If that happens, the person will not need to continue the CDCR administrative appeal process. The person should then have to seek relief from the courts through one of the steps described in § 8.41.

When a person has completed the administrative appeals process, they may challenge the CDCR's release date calculation by filing a state court petition for writ of habeas corpus. (State court habeas corpus petitions are discussed in Chapter 15.)

If a person is successful in getting the CDCR to correct a sentencing or credit error, the CDCR should revise the LSS and change the EPRD accordingly. Sometimes such changes result in the person being overdue for release. The person should be released immediately, and any excess credits must be deducted from the controlling parole or PRCS period.<sup>264</sup>

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<sup>261</sup> *People v. Mendoza* (1986) 187 Cal.App.3d 948, 954 [232 Cal.Rptr. 228].

<sup>262</sup> 15 CCR § 3084.7.

<sup>263</sup> *Haygood v. Younger* (9th Cir. 1985) 769 F.2d 1350; *Alexander v. Perrill* (9th Cir. 1990) 916 F.2d 1392.

<sup>264</sup> *In re Reina* (1985) 171 Cal.App.3d 638, 642 [217 Cal.Rptr. 535]; *In re Ballard* (1981) 115 Cal.App.3d 647, 650 [171 Cal.Rptr.459].

**EXPLANATION OF SAMPLE LEGAL STATUS SUMMARY (LSS)  
AND  
EARLIEST POSSIBLE RELEASE DATE (EPRD) CALCULATION**

This is a brief explanation of the sample LSS and sample EPRD calculation included in this Appendix. Note that this is a relatively simple case; calculations can get quite complicated. The general rule is to track, for any given time period, (1) what sentence the person is serving and (2) what conduct credits the person is earning, and (3) any additional conduct credits earned, lost or restored, and then account for that time period in the calculation. Here are some factors that can require special attention:

- ◆ Some people are serving multiple sentences from separate cases, and those sentences might have different CDCR conduct credit earning rates. For example, a person might have a regular case for which they are eligible to earn day-for-day (“50%”) conduct credit, and another case in which they are sentenced as a second-striker and limited to 20% conduct credit. A person must determine which sentence is controlling the conduct credit eligibility at each period of time.
- ◆ Sometimes, after people begin serving their CDCR terms, courts modify the sentence or the pre-sentence credits. The new abstract of judgment issued by the sentencing court should show the sentence date up through which the credits were calculated -- this is *not* necessarily the date that the modified abstract of judgement is stamped “filed” by the court clerk. Sometimes a court makes corrections to credits, fines, or other sentencing orders without changing the original sentence imposed date. Other times, a court may resentence the person and recalculate the actual pre-sentence credits up to the resentencing date; in a resentencing, the CDCR (not the court) is responsible for award conduct credits for all time spent in the CDCR after the original sentencing.
- ◆ Because of changes to the laws over time, many people will have had changes in their conduct credit-earning eligibility over the course of their terms. For example, up through April 30, 2017, a person who was convicted of a violent felony and serving a determinate (set-length) sentence was limited to 15% conduct credit-earning. As of May 1, 2017, under CDCR’s new Proposition 57 regulations, people convicted of violent felonies became eligible to earn 20% conduct credit, and even day-for-day (“50%”) conduct credit if they are a firefighter or assigned to a conservation camp. The person must determine the credit earned for each of these separate time periods.
- ◆ A person’s behavior in prison can significantly affect the amount of CDCR conduct credits they accumulate. A person who is found guilty of serious prison rule violations may lose conduct credits as punishment for the violations. In some cases, the person may also result lose their eligibility to earn credits for a period of time (“C status” or “D-2 status”). Conversely, a person who behaves well over time may be able to get into higher conduct credit-earning assignments like a conservation camp.
- ◆ In addition to earning good conduct credits on their actual days served, many people are now eligible for occasional awards of additional lump sum credits like Milestone Completion Credits, Education Merit Credits, and Rehabilitative Achievement Credits.



The sample LSS and sample EPRD calculation are for John Doe, #AA000, date of birth 1/1/1970, who is housed at San Quentin State Prison in Facility F, Bed 1000. This information is in the top box of the LSS, along with other information, such as whether John is eligible for full “PC2933” one-for-one credit, Minimum Custody (MCC) or other low-level special placements, or release on PRCS instead of parole at the end of his term. This section also shows the name of John’s correctional counselor and the correctional case records analyst who updated the LSS.

## **Sentencing Overview**

This section summarizes the most basic term information.

The term start date is the date that John arrived in CDCR -- 1/1/2011. He is serving a total term of 6 years.

The maximum date John can stay in the CDCR (unless he gets a new criminal conviction) is 6/3/2016. This date accounts for the actual days John spent in jail prior to being sentenced and good conduct credit the court awarded John for that time in jail (presentence credits). It also accounts for the actual days John spent in jail after he was sentenced but before he was transferred to CDCR and good conduct credits he earned during that time period (post-sentence credit and vested credit). The CDCR cannot take away these pre-sentence, post-sentence, and vested credits. Note that the maximum date assumes that John never accumulates any CDCR conduct credits.

However, John has earned and expects to continue to earn conduct credits in the CDCR. Accounting for his already-earned and expected-to-be-earned conduct credits, John’s Earliest Possible Release Date (EPRD) is currently calculated as of at 6/29/2013; this calculation was done on 9/11/2011. This EPRD is a best-estimate -- it will change in the future if John starts earning good conduct credits at a higher or lower rate, if he earns additional credits like Milestone Completion Credits, or if he loses credits for prison rule violations.

This section also shows the “time served” (all actual days in custody and all conduct credits earned thus far) and the “time remaining” to be served (either by actual days or conduct credits). The “time served” and “time remaining” should always add up to the total term. In this case John has 690 days “time served” and 1291 days “time remaining,” which equals 6 years.

## **Other Parole Eligibility Dates**

This section shows whether John might be eligible for consideration for some type of earlier parole eligibility sooner than his regular EPRD. He is not eligible for Youth Offender Parole because he was not under age 26 when he committed his crime. He is not eligible for Elderly Parole because he only has a 6-year term and his maximum release date is before he will turn 60 years old.

John *is* eligible for Non Violent Offender Parole consideration as of 9/17/2014 -- the date he will have served his full 4 year term for his primary offense of burglary (1/1/2015) minus actual time he served before sentencing and after sentencing but before arriving in the CDCR (in this case, as discussed in the next section, he was in jail from 9/17/2010-12/31/2010 or 106 days). However, his Non Violent Parole date is not of much interest to him because it is later than his current regular EPRD. John could benefit from Non Violent Offender Parole consideration only if he were to lose a lot of his conduct credits or stop earning conduct credits, so that his EPRD moved to a date later than 9/17/2014 (and even then his disciplinary record would have to be so bad that he would no be likely to be deemed suitable for Non Violent Offender Parole.).

## **Sentence Structure**

John was arrested on 9/17/2010 and placed in jail. He behaved well in jail.

John was convicted in Alameda County Case # ZZ0000 and was sentenced on 12/25/2010 [oddly enough, the court was open on Christmas . . .]. He receive a total sentence of 6 years for the following charges:

- ◆ Count 1: first-degree burglary (Penal Code § 460(a)) – mid-term of 4 years
- ◆ Enhancement for being armed with a firearm (Penal Code § 12022(a)(1)) – 1 year consecutive.
- ◆ Enhancement for a prior prison term (Penal Code § 667.5(b)) – 1 year consecutive

As the LSS shows, John is eligible to earn full day-for-day (“50%”) conduct credits on these terms while he is in CDCR. This is because his crime is not a violent felony, he is sentenced to a determinate term, and he is not a “second-striker.”

By the date John was sentenced he had spent 100 actual days in jail (from 9/17/2010-12/25/2010). He earned full day-for-day (“50%”) conduct credits on that actual time. The court thus granted John presentence credits for his jail time: 100 days actual credits + 100 conduct credits = 200 total pre-sentence credits.

John can check the information about his sentencing date, sentence terms, and pre-sentence credits by looking at the Abstract of Judgment issued by the sentencing court. He can check his arrest and pre-sentence custody dates date by looking at his probation report.

John spent 6 more actual days in jail (from 12/26/2010 through 12/31/2010) after he was sentenced and before he was transferred to the CDCR (post-sentence credits). He behaved well in jail during this time and earned 6 day-for-day (“50%”) conduct credits ( “vested” credit). He arrived in CDCR on 1/1/2011.

## **Legal Mandates**

This section does affect the EPRD, but it does show if the law requires the CDCR to notify law enforcement or crime victims prior to releasing the person.

## **Dead Time**

This is time that does not count toward service of the sentence. For example, if someone escapes from CDCR, the period of time that they are out and missing would not count toward service of their sentence. In this case, John does not have any dead time.

## **CDCR Credits Received/Lost**

The LSS shows (1) a person’s credit-earning status at all periods of time up until the current date, (2) additional credits earned, such as Milestone Completion Credits, (2) credits that have been lost for disciplinary violations and (3) lost credits that have been restored due to subsequent good behavior.

In this example, John arrived in CDCR on 1/1/2011. He immediately got Work Group A-1 full time job assignment (unusually quickly!) and earned day for day (“50%”) good conduct credits up through 3/15/2011. He was in this assignment for 74 days and earned 74 days of good conduct credits (74 actual days ÷ 1 =74).

On 3/16/2011, John got assigned to a conservation camp. Thus, his status changed to Work Group F, and he started earning good conduct credits of two days for each actual day served (“66.6%”). He stayed in this assignment for 190 days and earned 380 days of good conduct credits (190 actual days x 2 =380).

However, on 9/22/2011, John was found guilty of a serious rule violation and lost 30 days of good conduct credit, which was subtracted from the total number of CDCR conduct credits he has earned.

Also on 9/22/2011, John was unassigned from conservation camp and went back to a regular Work Group A-1 assignment with day-for-day (“50%”) good conduct credit earning. His EPRD was updated as of that date and shows the 1 actual day he has served and 1 day good conduct credit he has earned since being re-assigned to Work Group A-1. John’s future good conduct credit-earning is now predicted on the assumption that he stays A-1 earning day-for-day (“50%”) good conduct credits. If his credit-earning status changes in the future, his EPRD will be recalculated.

John has not yet earned any Milestone Completion Credit, Rehabilitative Achievement Credit, or Education Merit Credit. If John earns such credits in the future, those credits will be added to his total CDCR conduct credits.

Also, if John gets more rule violations in the future, any credits he loses as punishment for those rule violations will be subtracted from his total CDCR conduct credits.

Finally, John has not had any of his lost credits restored. However, if he has good behavior for a period of time after his most recent disciplinary violation, he can apply to get the lost credits restored. Any credits that are restored will be added back into his total CDCR conduct credits.

### **Financial Obligations**

This section shows financial obligations the person owes that are being tracked by the CDCR. John has none.

### **Active Detainers/Notifications**

This section shows if the person has any detainers from immigration officials (ICE) or for other criminal charges, unserved sentences, or unserved probation or parole terms. John does not have any of these.

(Sample Legal Status Summary based on the Format Used by the CDCR)

AA000 DOE, JOHN

LEGAL STATUS SUMMARY

Page 1 of 2

Inmate Name: Doe, John	CDC # AA0000	DOB: 01/01/1970
Facility: SQSP	Housing: F -1000	CCRA: J. Smith
PC2933 Eligible: Y	MCC/RAC/ECC Eligible:	CCI: A. Counselor
		PRCS Eligible: No

You have been committed to the CDCR to serve the following sentences:

<b>Sentencing Overview</b>		
Term Start Date: 1/1/2011	Total Term: 6 y, 0 m, 0 d	Overall Max Date: 6/3/2016
Control Date: 6/29/2013	Control Date Type: EPRD	
Time Served: 690	Time Remaining 1291	As of Date 9/22/2011

<b>Other Parole Eligibility Dates:</b>
Non-Violent Parole Eligibility Date (NPED): 9/17/2014
Youth Offender Parole Eligibility Date (YEPD): N/A
Elderly Parole Eligibility Date (EPED): N/A

<b>Sentence Structure</b>											
Cmt	County	Sentence Date	Total Time Imposed	Status	Status Date						
AA	Alameda	12/25/2010	6y 0m 0 d	Imposed	12/25/2010						
<b>Sentence Components (1 - 2 of 2)</b>											
Cmp	Count	County/Case #	Crime (Statute)	Offense	Offense Date	Time Imposed	Relationship to Cmt./Cmp.	Credit Rate	Pre-Snt Credit	Post-Snt Credit	Vested Credit
01	001	Alameda ZZ00000	PC 460(a)	Burglary 1st	9/16/2010	4y 0m 0d		(50%) Day for day	200	6	6
02	001	Alameda ZZ00000	PC 12022(a)(1)	Armed with Firearm	9/16/2010	1y 0m 0d	Consecutive	(50%) Day for day			
<b>Enhancements for Prior Conviction or Prison Terms (1 - 1 of 1)</b>											
Case #	Penal Code	Description	Time Imposed	Stayed	Credit Rate						
ZZ00000	PC 667.5(b)	Prior Prison Term	1y 0m 0d	No	(50%)						

<b>Legal Mandates</b>				
Cmt/Cmp.	Mandate Type	Begin Date	Due Date	Status
No Rows Found				

<b>Dead Time</b>			
Began	Ended	Days	Type
No Rows Found			

CDCR Credits Received/Lost (1-4 of 4)								
Entry Date	Effective Date	Type	Work Group	Duration (days)	Recd/Lost Days	Reason	Status	Qualifier
09/22/2011	9/22/2011	Work Group Change	A1-Full Time Assignment	1			Applied	
09/22/2011	09/22/2011	Credit Lost (due to Disciplinary)			30		Applied	Log # C130000
3/17/2011	03/16/2011	Work Group Change	F-Conservation Camp	190			Applied	
01/05/2011	01/01/2011	Work Group Change	A1-Full Time Assignment	74			Applied	

Financial Obligations				
Commitment	Court	Case Number	Account Type	Amount Ordered
No Rows Found				

Active Detainers/Notifications					
Date Placed	Type	Reason	Agency Name	Detainer/Case #	Offense
No Rows Found					

Legend: (The Dates shown above are subject to change)





**APPLICATION FOR RESTORATION OF CREDITS**

*Credits that have been forfeited due to disciplinary offences occurring on or after January 1, 1983 shall be considered for restoration in accordance with Director's Rules (DR 3327). Submit this application to your counselor.*

I....., hereby make  
Inmate name number  
formal application for restoration of credits lost due to a finding of guilt on CDCR-115  
Dated....., Log number.....

Offense Division: A-1 A-2 B C D E F (circle one)  
Number of Days credit that were forfeited:.....  
I have remained disciplinary free for.....days.

.....  
Inmate signature number housing unit

Application submitted to counselor on:.....  
Date

**COUNSELOR VERIFICATION:** This inmate. . .

- 1. Meets all the criteria for credit restoration.....
  - 2. Does not meet all criteria for credit restoration.....
- (Give Brief Description)

.....  
.....  
.....  
.....  
.....

**If No. 2 is checked inmate will not be scheduled for hearing, return form to inmate**

.....  
RE-ENTER SPECIALIST/COUNSELOR SIGNATURE DATE

Classification Committee CDCR-128 G shall state number of Days restored with copy to inmate.