Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that people in prison often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

CREDITS FOR PEOPLE IN COUNTY JAILS
WHOSE TRANSFER TO A CDCR STATE PRISON IS DELAYED DUE TO COVID-19
(October 2020)

This letter is for people who have been sentenced to serve felony terms in state prison (the Department of Corrections and Rehabilitation or CDCR), but whose transfers from county jail to CDCR are delayed because of COVID-19. We hope this letter helps answers your questions about your credits and release date. This letter discusses what we know as of the beginning of October 2020 from information provided by CDCR and by public defenders in several counties. Be aware that the situation and policies are likely to change over time. We will try to update this letter when there are major new developments.

Why am I stuck in county jail? When will I be sent to a CDCR prison reception center?

In “normal” times, people who have been sentenced to prison terms are transferred from county jail to a CDCR reception center a few days to a few weeks after their sentencing hearing. However, in March 2020, CDCR stopped all intake transfers in an attempt to prevent the spread of COVID-19. In May 2020, CDCR briefly re-opened for intake, but then closed again for the rest of the summer. Starting in late August 2020, CDCR has once again started to take people from county jails at its CDCR reception centers. These closures and limits have resulted in many people staying in county jail for a long time before being transferred to CDCR. We do not know when CDCR will catch up with the backlog of transfers or how long you will have to wait for a transfer.
Who is going to calculate my credits for time in county jail after sentencing and before I get moved to CDCR? When will I get those credits? If my term is short, will I be released on time?

CDCR is responsible for calculating your actual days served and good conduct credits for the time you spend in jail between when the court sentences you and when CDCR takes custody of you (your post-sentence/pre-prison time). (Penal Code § 2900.5(e).) Normally, CDCR calculates these credits when you arrive in a CDCR reception center. Unfortunately, the CDCR intake closures and limits mean that some people are serving many months before being transferred to CDCR.

Starting in late April 2020, CDCR has been working with county jail staff to identify people who have 45-60 days remaining on their sentence to calculate their credits and arrange for their releases. As of September 2020, several counties’ public defenders report that CDCR is making further efforts to work with jail staff to calculate post-sentence/pre-prison credits. Also, in some counties, public defenders are reporting that the district attorney’s offices and the superior courts are cooperating to calculate credits and order timely releases.

What good conduct credit earning rate applies to me after my sentencing and until I get moved to a CDCR prison?

Normally, you earn good conduct credits for post-sentence/pre-prison time at the same rate as for jail time before you were sentenced. (See Penal Code § 4019(a) [jail conduct credit rate credits apply until date sentence commences]; § 2900(a) [term of imprisonment commences on actual delivery to CDCR].) CDCR calls these “vested” credits. Some (but not all) people earn good conduct credits at a higher rate after they arrive in state prison. For these people, the delays in state prison intakes are also delaying their opportunities to earn good conduct credits at a higher rate. This is an area of on-going dispute.

As of September 2020, several public defenders report that CDCR has started working with county jail staff to award good conduct credits at the rate that applies to state prison time to some people whose transfers have been delayed. Here is what we have heard so far:

- People serving terms for violent felonies earn only 15% conduct credits for county jail time but earn 20% (one day conduct credit for every four days served) credits in state prison. CDCR is applying the higher credit rate for people whose transfer to CDCR is delayed.
In prison, most people who are assigned to a **conservation camp**, who **train or work as a firefighter**, or who are assigned to **Minimum A or Minimum B custody** earn conduct credits at a higher rate than they would normally earn, up to 66% credit (two days conduct credit for one day actually served). These assignments are only available to people with shorter terms, and/or who have been in prison for a while with good programming and behavior. **CDCR is not awarding these types of conduct credits to people for time during which they are delayed in county jails.** The rationale seems to be that (1) people do not start earning these credits right away when they get to prison, as they must at least first go through reception center processing, be confirmed as eligible for these assignments, and then be transferred to their assigned prison, and (2) many factors go into determining who is eligible for these assignments.

**I’ve heard CDCR has been granting extra programming credits to people in prison. Can I get those credits?**

In addition to good conduct credits, people in state prison earn credits for programming, such as Milestone Completion Credits, Rehabilitative Achievement Credits, and Education Merit Credits. Unfortunately, many prison programs were suspended or limited starting in March 2020 and are only slowly re-opening. In July 2020, CDCR awarded 12 weeks of Positive Programming Credit (PPC) to many people in prison to make up for the impact of COVID-19 on access to programs.

CDCR has announced that, beginning October 1, 2020, it will award the same PPC to people whose transfers from county jails has been delayed. People in county jail who were sentenced to state prison on or before July 5, 2020, and who missed out on the 12 weeks of credits awarded in July because they weren’t yet in CDCR, will get the 12 weeks (84 days) of credits unless they are sentenced to death or life without the possibility of parole (LWOP) or they had a serious rule violation between March 1 and July 5, 2020. If you have less than two years to serve, you will get the credits while still in the jail. If you have more than two years to serve, you won’t get the credits until you arrive at a CDCR reception center. If you were already transferred to CDCR custody before CDCR adopted this policy, prison staff will review your case and apply the credit.

**I’ve heard CDCR is releasing some people early because of COVID-19? Can I get released early?**

In order to reduce the spread of COVID-19, CDCR has created early release programs to reduce the prison population. **These early releases currently are not available to people in jails.**
For people in state prison, the two early release programs are:

- **180-day release** for people who have 180 days or less to serve on their sentence. To be eligible, you (1) must not be serving time for domestic violence or a violent crime, (2) must not have a current or prior sentence that requires you to register as a sex offender, and (3) must not have an assessment score that indicates a high risk for violence.

- **One-year release** for people with 365 days or less to serve on their sentence, and who are in specific prisons that have many people at high risk of serious effects from COVID-19. To be eligible, you must meet the same three criteria that apply to 180-day releases. People who are 30 and over and who meet the criteria are immediately eligible for release. People who meet these criteria and are age 29 or under will be reviewed on a case-by-case basis for release, with consideration given to medical risk, case factors, and time served.

**Where can I get more information or assistance?**

The CDCR website posts updated information about CDCR’s COVID-19 response efforts: https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#CJI.

If you are in county jail, your transfer to CDCR has been delayed, and you are worried that you won’t get your fair credits or will be held past your release date, contact the public defender’s office (and/or your private defense attorney) to ask for help with having your post-sentence/pre-prison credits calculated and applied.

If you have already been transferred to CDCR and you have concerns about the credits you received for your post-sentence/pre-prison time, you should file a 602 grievance/appeal and pursue it to the highest level necessary.

If you want to bring a legal action to fix a problem with your credits or release date, the best option most likely will be a state court petition for writ of habeas corpus.

More information on credit earning, 602 grievances/appeals, and state habeas corpus petitions is available for free on request by writing to Prison Law Office or on the Prison Law Office website’s Resources page at www.prisonlaw.com.