



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964-0001
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Laura Bixby
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that people in prison often have trouble getting legal information and we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. 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 still applies to your situation. Most of the materials you need should be available in your institution's law library.

TIME CREDITS FOR PEOPLE IN CDCR
(June 2021)

This letter discusses the California Department of Corrections and Rehabilitation (CDCR) rules on time credits for good conduct and programming. CDCR can make its own credit rules under Article I, section 32 of the California Constitution, which was added in November 2016 when voters passed Proposition 57. CDCR's time credit rules are in Title 15 of the California Code of Regulations (CCR). The Title 15 rules should be available in prison law libraries and available to people housed in restricted housing. The rules are on the CDCR website at www.cdcr.ca.gov.¹

Because CDCR credit rules have changed in recent years, the credit you earned in the past might be different than what you earn today. The most recent changes to CDCR time credit rules went into effect on May 1, 2021. The main changes are:

(1) Increased Good Conduct Credits of 33.3% for people with violent offenses and 50% for people with second- and third-strike sentences for current non-violent felonies;

(2) The way in which credits are awarded to people who are firefighters/in fire camp/assigned Min A or Min B custody has changed. Instead of getting more Good Conduct Credits, people get the normal Good Conduct Credits that apply to their sentence/offense PLUS "Minimum Security Credits" of 30 days for every 30 days served. This is negatively affecting release dates for some people who were already firefighters/in fire camp/assigned Min A or Min B earning 66.6% credits (see pages 5-6, below); and

(3) Placement in Work Group C or Work Group D-2 no longer means Zero Credit Earning.

¹ CDCR also has rules that permit early parole for some people convicted of non-violent offenses. We have a separate information letter about those rules. If you want that letter, and we did not send it to you, please write to us and ask for it. The letter is also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab.

Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President • Marshall Krause, Treasurer
Harlan Grossman • Christiane Hipps • Margaret Johns • Cesar Lagleva • Jean Lu
Laura Magnani • Michael Marcum • Ruth Morgan • Seth Morris • Vishal Shah

GOOD CONDUCT CREDITS

Sentence, Offense, Custody Level	Credit Rate before 5/1/17	Credit Rate 5/1/17 to 4/30/21	Credit Rate starting 5/1/21
Life without parole (LWOP) or condemned	0%	0%	0%
Indeterminate sentence not previously eligible for credits (murder and some other crimes)	0%	20%	33.3%
Indeterminate three strikes sentence + current offense is violent	0%	20%	33.3%
Other indeterminate sentence or determinate sentence (including two strikes sentences) + current offense is violent	15%	20%	33.3%
Indeterminate three strikes sentence + current offense is non-violent	0%	33.3%	50%
Determinate two strikes sentence + current offense is non-violent	33.3% (eff. 2/10/14, prior 20%)	33.3%	50%
Other determinate sentence + current offense is non-violent	50%	50%	50%
Determinate sentence + current offense is violent + firefighter or in fire camp	15%	50%	Firefighters, people in fire camp, and people in Min A or Min B Custody earn Good Conduct Credits at the normal rate for their sentence + offense (see above) PLUS a new type of "Minimum Security Credits" (see p. 5, below.)
Determinate two strikes sentence + current offense is non-violent + firefighter or in fire camp	33.3% (eff. 2/10/14, prior 20%)	66.6%	
Determinate sentence (except two strikes sentence) + current offense is non-violent + firefighter or in fire camp	66.6%	66.6%	
Assigned to Minimum A or Minimum B custody (but not a firefighter or in fire camp)	No special rate prior to 1/1/15	66.6% (eff. 1/1/15; but people not otherwise eligible for 50% credit – those with violent offenses or two- or three-strikes -- earned only their normal credit rate)	

Good Conduct Credits are available to all people in prison who are serving determinate (set-length) sentences and indeterminate (life with the possibility of parole) sentences, including those who are housed in Department of Juvenile Justice (DJJ) facilities (if sentenced as adults) or in alternative custody, pre-parole, or re-entry programs. The credit rules also apply to people serving California prison sentences in modified community correctional facilities (MCCFs), state hospitals, federal prisons, or other states' prisons. As shown in the chart on p. 2 of this letter, CDCR grants different levels of Good Conduct Credits depending on a person's sentence, type of offense, and (sometimes in the past) custody level or program assignment. Note that the chart does not cover credit-earning rules that applied at various dates prior to January 25, 2010.

Credits for the various CDCR credit groups in the chart are calculated as:

- 20% - serve 4 actual days, get 1 day Good Conduct Credit = 5 days total
- 33.3% - serve 2 actual days, get 1 day Good Conduct Credit = 3 days total.
- 50% - serve 1 actual day, get 1 day Good Conduct Credit = 2 days total.
- 66.6% - serve 1 actual day, get 2 days Good Conduct Credit = 3 days total.

The CDCR rules governing credit-earning are in Title 15 of the California Code of Regulations (CCR) sections 3043-3043.7. These rules replace all previous California laws and CDCR rules regarding credits for good behavior and programming in prison, and include credits required by a February 2014 federal court order to reduce prison overcrowding. Note that although CDCR conduct credits apply toward the Earliest Possible Release Date for determinate sentences and the Minimum Eligible Parole Date (MEPD) for indeterminate (life with the possibility of parole) sentences, the credits do *not* apply toward a Youth Offender Parole Eligible Date (YPED), Elderly Parole Eligible Date (EPED), or Nonviolent Parole Eligible Date (NVPED).

People can lose Good Conduct Credits if they violate prison rules. In some cases, they can get lost credits restored if they then remain free of rule violations for a period of time.²

Prior to May 1, 2021, people could be placed on Zero Credit earning status for twice refusing to accept assigned housing, refusing to perform an assignment, or being a program failure (Work Group C) or due to placement in a segregation unit for a serious rule violation (Work Group D-2). Effective May 1, 2021 placements in Work Groups C and D-2 no longer affect Good Conduct Credit earning.³ People in those Work Groups will continue to earn the Good Conduct Credits that apply to their criminal offenses and sentence.

² 15 CCR §§ 3323, 3327-3329.5.

³ 15 CCR § 3044(b)(4) and (b)(6).

PROGRAMMING CREDITS – MILESTONE COMPLETION, REHABILITATIVE ACHIEVEMENT, EDUCATION MERIT, EXTRAORDINARY CONDUCT, AND MINIMUM SECURITY CREDITS

Effective August 1, 2017, all people in CDCR prisons serving determinate sentences or sentences of life with the possibility of parole are eligible to earn additional credits for successful participation in approved programs. These credits also apply to people in DJJ (if sentenced as adults) and in alternative custody, pre-parole and re-reentry programs. These credits do not apply to people sentenced to death or to LWOP terms. Note that although CDCR programming credits apply toward the Earliest Possible Release Date for determinate sentences and the Minimum Eligible Parole Date (MEPD) for indeterminate (life with the possibility of parole) sentences, the credits do *not* apply toward a Youth Offender Parole Eligible Date (YPED), Elderly Parole Eligible Date (EPED), or Nonviolent Parole Eligible Date (NVPED).

- **Milestone Completion Credits:** These credits are awarded for achieving objectives in approved rehabilitative programs, including academic, vocational, and therapeutic programs. Milestone Credits have existed since January 2010, but rules that took effect on August 1, 2017 increased the credits that could be earned and made more people eligible to earn such credits. A person can earn 12 weeks of Milestone Credits in a 12-month period (or 6 weeks in a 12-month period for participation in EOP, DDP, or mental health inpatient programs). If a person earns excess credits, the excess credits will be rolled over and can be applied in the following year. A person must participate in a class to get Milestones; they cannot be earned just for passing a test. Also, a person cannot get Milestone Credits for earning a high school diploma if they already have one. The programs eligible for credit include full-time rehabilitative programming, alternative custody programs, Enhanced Outpatient (EOP) mental health participation and Developmentally Disabled Program (DDP) participation. Milestone Completion Credits can be lost due to rule violations and restored for subsequent good behavior under the general rules that apply to credit loss and restoration.⁴
- **Rehabilitative Achievement Credits:** This type of credit is for participation in eligible self-help and volunteer public service activities. Starting August 1, 2017, people could earn 1 week (7 days) of credit for every 52 hours of participation, up to a maximum of 4 weeks (28 days) of credit in a 12-month period. As of May 1, 2019 (under new emergency regulations), people can earn 10 days of credit for every 52 hours of participation, up to a maximum of 40 days credit in a 12-month period. People who are housed in DJJ or alternative custody facilities, including pre-parole or re-entry programs, can earn Rehabilitative Achievement Credits, but in different amounts (starting August 1, 2017, the

⁴ 15 CCR § 3043.3.

rate was 1 week of credit for 3 months of participation, up to a maximum of 4 weeks credit in a 12-month period; starting May 1, 2019, the rate is 10 days of credit for every 3 months of participation, up to a maximum of 40 days credit in a 12-month period). Starting May 1, 2019, if a person earns excess credits, the excess credits will be rolled over and can be applied during following years. Rehabilitative Achievement Credits can be lost due to rule violations and restored for subsequent good behavior under the general rules that apply to credit loss and restoration.⁵

- **Education Merit Credits:** These credits recognize the achievements of people who earn high school diplomas, high school equivalency, or higher education degrees, or who complete an offender mentor certification program. A person must earn at least 50 percent or more of the degree or diploma during their current term to receive Education Merit Credits. Starting on August 1, 2017, a person who earned a high school diploma or equivalent got 90 days of credit; these credits apply retroactively to degrees earned prior to that date. Starting on May 1, 2019, a person who earns a high school diploma or equivalent earns 180 days of credit; people who previously got only 90 days of credit under the older rule are to be granted an additional 90 days of credit. Starting August 1, 2017, a person who earns a higher education degree or an offender mentor certification gets 180 days credit. Education Merit Credits apply to people serving California prison sentences who are housed in federal prison, other states' prisons, or in state hospitals. Prior to May 1, 2021, Educational Merit Credits could not be taken away due to rule violations. Effective May 1, 2021, Educational Merit Credits can be lost due to rule violations and restored for subsequent good behavior under the general rules that apply to credit loss and restoration.⁶
- **Minimum Security Credits:** Effective May 1, 2021, CDCR changed the way that it gives extra credits to people who are firefighters, in fire camps, or in Minimum A or Minimum B custody. There are no longer extra Good Conduct Credits for those people. Instead, people who are Work Group M (assigned Minimum A or Minimum B Custody or otherwise eligible for Minimum A or Minimum B Custody) or Work Group F (assigned Minimum B Custody and trained or working as a firefighter or placed in a fire camp) earn 30 days of Minimum Security Credits for every 30 days served (essentially “day for day”) in addition to the normal Good Conduct Credits that apply to their sentence and offenses.⁷

The total credits earned by a person under the new system will eventually add up to more or (close to) the same credits than under the previous rules:

⁵ 15 CCR § 3043.4.

⁶ 15 CCR § 3043.5.

⁷ 15 CCR § 3043.7.

- ◆ If current offense is non-violent, including non-violent second- or third-strike sentences: 50% (1 day credit for 1 day served) Good Conduct Credit + Minimum Security Credit = total of (approximately) 66.6% credits (2 days credit for 1 day served)
- ◆ If current offense is violent: 33% (1 day credit for 2 days served) Good Conduct Credit + Minimum Security Credit = total of (approximately) 60% credits (1.5 days credit for 1 day served).
- ◆ However, people who were in Work Group M or F and earning 66.6% credits when the new rules went into effect on May 1, 2021 are ending up with later release dates than they had under the prior credit system. Prison Law Office is reviewing this issue for possible challenges. There are three reasons why the new rules are affecting release dates this way:
 - Minimum Security Credits are awarded retroactively, after a person serves the time in Work Group M or F. The credits are awarded in increments of 30 days, within 10 business days after the person completes 30 consecutive calendar days in Work Group M or F. This means that (unlike Good Conduct Credits) Minimum Security Credits don't show up in the advance EPRD calculation. However, the EPRD will move closer every month as Minimum Security Credits get awarded.
 - Minimum Security Credits are awarded in clumps of 30 days. Some people may earn their 30-day award and then have less than 30 more days left to serve. Thus, there will be a period of at the end of the terms for which they won't get Minimum Security Credit.
 - CDCR rules prohibit staff from awarding Minimum Security Credits that will bring a person's release date to within less than 15 calendar days from the date the award is applied (or within 45 days for a person with term for child abuse or sex offense against a minor, or 60 days for a person serving a term for a violent felony). This is another reason why people won't get Minimum Security Credit for the last bit of their terms.

Here is some more information about who is eligible to earn Minimum Security Credits:

- ◆ Minimum Custody Eligibility: Minimum A and Minimum B are the lowest custody levels in CDCR prisons (the higher custody levels are Maximum, Close, Medium A, and Medium B). Generally, eligibility for Minimum Custody depends on the type of the commitment offense and length of the sentence, criminal history,

whether the person has detainers (holds), and their behavior in custody. CDCR rules require that some people be Close Custody due to a lengthy sentence, history of escape, detainer for an offense with a possible long sentence, some serious disciplinary offenses, and having special security concerns; many people can be considered for a custody level reduction after serving a period of time without any recent serious disciplinary violations.⁸ The CDCR also has rules limiting some people from being placed in the lowest facility security levels.⁹ Another set of rules requires or allows CDCR to put a person in a higher security level than they would otherwise qualify for by placing a “VIO” code on their classification due to a violent current or prior felony criminal conviction or juvenile adjudication, violent A-1 or A-2 prison rule violation, or violent parole or probation violation; these rules also give CDCR staff discretion to remove some people’s VIO codes after they serve some time with good behavior and programming.¹⁰ Note that in an effort to expand access to programs, the CDCR has adopted a policy requiring classification committees to actively consider granting “overrides” by placing people in higher or lower levels than otherwise indicated by their classification scores, based on good or poor programming.¹¹

- ◆ Firefighter or Conservation (Fire) Camp Assignment: Only people who are Minimum Custody B and behave well in prison can be assigned to a fire station or fire camp. A person is not eligible for camp if they are required to register as a sex offender, have an arson offense, or have history of escape with force or violence. They must also pass a physical evaluation.¹²
- ◆ People Whose Assignments are Limited by Medical, Mental Health, or Disability Needs: Effective January 1, 2018, people became eligible for the same credits they would earn in minimum custody even if they could not be assigned to a minimum custody program because of health reasons. Also, these credits can be applied retroactively to May 1, 2017, so long as the additional credits do not put a person within less than 60 days of release. To qualify, a person must meet three criteria: (1) be otherwise eligible for Minimum A or Minimum B Custody, (2) be otherwise eligible for 50% credit (meaning this does not apply to non-violent second strikers or people serving terms for violent offenses), and (3) their eligibility for placement

⁸ 15 CCR § 3377.2.

⁹ 15 CCR § 3375.2(a).

¹⁰ 15 CCR § 3375.2(b)(29).

¹¹ CDCR, *Memorandum: Utilization of Administrative Determinants Based Upon Positive and Negative Inmate Behavior and Increased Access to Rehabilitative Programs* (Jul. 5, 2016).

¹² CDCR website, www.cdcr.ca.gov/conservation_camps.

in a Minimum A or Minimum B facility is limited solely because they are getting mental health services at the EOP level or higher, their medical or mental health status requires additional clinical and custodial supervision, or they have a permanent disability or need for dialysis that impacts placement.¹³

- ◆ **Reception Centers:** People in Reception Centers generally cannot earn Minimum Security Credits. However, Minimum Security Credits should be granted to people who are delayed in a Reception Center past 60 days solely due to a permanent disability that impacts placement or need for dialysis; these people start earning Minimum Security Credits starting the 61st day of their Reception Center stay.¹⁴
- ◆ **Rule Violations:** Minimum Security Credits can be lost due to rule violations and restored for subsequent good behavior under the general rules that apply to credit loss and restoration.
- **Extraordinary Conduct Credit:** CDCR has long had discretion to award up to 12 months additional credits to a person who has performed a heroic act in a life-threatening situation or provided exceptional assistance in maintaining prison safety and security. That provision continues to exist under the newer rules that took effect August 1, 2017. Prior to May 1, 2021, Extraordinary Conduct Credits could not be taken away due to rule violations. Effective May 1, 2021, Extraordinary Conduct Credits can be lost due to rule violations and restored for subsequent good behavior under the general rules that apply to credit loss and restoration.¹⁵

CHALLENGING THE CREDIT RULES OR HOW THE RULES ARE BEING APPLIED

The emergency credit rules that went into effect on May 1, 2021 have not yet been permanently adopted. These rules may be amended as CDCR goes through the formal rule-making process, including taking public comments. Also, in late May 2021, a group of District Attorneys filed a lawsuit in Sacramento County Superior Court, asking the court to force CDCR to stop giving the additional credits provided by the new emergency rules; the lawsuit is still pending.

If you believe that prison conduct or programming credits are not being fairly applied in your case, you should file an administrative appeal and pursue it to the highest level necessary.

¹³ 15 CCR § 3044(b)(8)(B).

¹⁴ 15 CCR § 3044(b)(8)(G). People with disabilities impacting placement have a CDCR code DPW, DPO, DPM, DLT, DPV, DPH, or DPS.

¹⁵ 15 CCR § 3043.6; see also Penal Code 2935.

For most credit issues, use a CDCR Form 602 Inmate/Parolee Appeal. If you are being denied credit opportunities due to a disability, file a CDCR 1824 Reasonable Accommodation Request.

If you pursue an administrative appeal to the highest level of review, and are not satisfied with the responses, you can send copies of the appeal and responses to the Prison Law Office for review: Prison Law Office, General Delivery, San Quentin, CA 94964. The Prison Law Office is interested in making sure the CDCR applies its credit rules fairly.

If you pursue an administrative appeal to the highest level of review and are not satisfied with the responses, you can file a state court habeas petition arguing that the CDCR is interpreting or applying its rules in an unreasonable manner and/or is violating federal or state law.

Free manuals on How to File a CDCR Administrative Appeal and on State Court Petitions for Writ of Habeas Corpus are available by writing to the Prison Law Office, General Delivery, San Quentin, CA 94964 or on the Resources page at www.prisonlaw.com.